राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 16 सितम्बर, 2023 / 25 भाद्रपद 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 25th July, 2023

Shram (A) 6-2/2020 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Kangra at Dharamshala on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette" :—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	111/14	Tilak Raj	M.D. HPGIC, Nurpur	01-05-2023
2.	03/18	Savitri Devi	Principal, DAV Pub. School, Una	03-05-2023
3.	82/21	Vijay Pal Sharma	M/s Link Utsav Ventures	08-05-2023
4.	36/17	Ramesh Kumar	Registrar, CSK, HPKVV. Palampur	08-05-2023
5.	108/17	Shashi Kumar	Registrar, CSK, HPKVV. Palampur	09-05-2023
6.	107/17	Shamsher Singh	Registrar, CSK, HPKVV. Palampur	10-05-2023
7.	15/20	Ashwani Dutta	Director K.C Group of Institutions	10-05-2023
8.	46/20	Ravinder Singh Wasan	M/s Jagran Prakashan Ltd. & others	13-05-2023
9.	213/15	Naresh Kumar	The D.F.O. Suket	18-05-2023
10.	555/15	Prem Lal	The D.F.O. Suket	18-05-2023
11.	344/14	Roshan Lal	The E.E. HPSEBL, Kullu	18-05-2023
12.	686/16	Lakhvinder Singh	The E.E. HPSEBL, Manali, Kullu	18-05-2023
13.	20/18	Raj Dev	The E.E. HPPWD, Dharampur	18-05-2023
14.	62/20	Bantu Devi	M.D. K.C.C. Bank Ltd. D.Shala	18-05-2023
15.	13/14	Kamla Devi	Registrar, H.P. University of Horticulture & Forestry Nauni, H.P.	26-05-2023
16.	583/15	Kamla Devi	Registrar, H.P. University of Horticulture & Forestry Nauni, H.P.	26-05-2023
17.	34/21	Vikas Kumar	M/s J.S.Grover Automotive Pvt. Ltd.	31-05-2023
18.	35/21	Ravish Sharma	M/s J.S.Grover Automotive Pvt. Ltd.	31-05-2023
19.	198/15	Naresh Kumar	M. D. Beas Valley Power Cop.	31-05-2023
20.	133/15	Sanjeev Kumar	M. D. Beas Valley Power Cop.	31-05-2023
21.	83/20	Rinki	The D.F.O. Chamba	31-05-2023

By order,

AKSHAY SOOD,
Secretary (Lab. & Emp.).

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref. No. : 111/2014

Date of Institution : 26-2-2014

Date of Decision : 01-05-2023

Shri Tilak Raj s/o Shri Rattan Singh, r/o Village Bhed Khad, P.O. Jaunta, Tehsil Nurpur, District Kangra, H.P. . .*Petitioner.*

Versus

1. The Managing Director, H.P. General Industries Corporation Limited, Himrus Building, Cart Road, Shimla –1.

2. The Director, H.P. General Industries Corporation Limited Dharamshala, District Kangra, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S. D. Sharma, Ld. Adv.

For the respondent(s) : Sh. Vipul Bhardwaj, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether action of the employers (i) the Managing Director, H.P. General Industries Corporation Limited, Himrus Building, Cart Road, Shimla-1, (ii) the Director H.P. General Industries Corporation Limited Dharamshala, District Kangra, H.P., not to regularize the services of Shri Tilak Raj s/o Shri Rattan Singh, r/o Village Bhed Khad, P.O. Jaunta, Tehsil Nurpur, District Kangra, H.P. who is working at Nurpur Silk Mills at Nurpur, District Kangra, H.P. on completion of continuous service of 8 years, as defined in section 25(B) of the Industrial Disputes Act, 1947 *i.e.* 240 working days in every year, as per policy of the Himachal Pradesh Government is legal and justified? If not, what benefits regarding regularization, back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. The case of the petitioner, in brief, is to the effect that he was engaged as daily wage worker in Nurpur Silk Mill in September 1993 and was transferred to Industrial Training Institute Nurpur as Chowkidar on daily wage basis on 1.9.2012. He joined in the transferee department on 3.9.2012 and after his absorption, his services were regularized in August 2013. He thus worked for 19 years 11 months and six days in Silk Mill unit of the respondents at Nurpur, but his services were not regularized at all. According to him, his services should have been regularized in September 2001 on completion of eight years as per the regularization polices. He had worked for more than 240 working days in each calendar year in the period of 19 years and his services were still not regularized. One Smt. Pushpa Devi wife of Shri Bansi Lal was regularized in the year 1998 on completion of 08 years of services and the petitioner was also entitled for parity treatment. One Shri Ashwani Kumar s/o Shri Babu Ram was transferred to Education Department in the year 2010 from the same Silk Mill and he was regularized in the year 2013 and he was given all the previous benefits of regularization. The petitioner approached the respondents time and again verbally and in writing but his case was never considered for regularization and other benefits, hence, he had to approach the Conciliation Officer by way of demand and the reference has been made when the conciliation could not succeed. On these averments, the petitioner has claimed his notional regularization and counting of the period of notional regularization for the purpose of seniority. He has also prayed for the benefit of seniority counted for the pension, arrears and pensionary benefits.

3. The respondents have resisted and contested the claim on the plea that petitioner had no cause of action and claim was not maintainable. On merits, it is submitted that the petitioner was though engaged in the Silk Mill as claimed by him, but he was sent on secondment basis to the Department of Technical Education. The respondents has denied that petitioner was entitled for his regularization in the manner as claimed. It is explained that since the petitioner is not the employee of the respondents, therefore, no relief can be granted against them, and moreover, the regularization policies were not applicable to the respondent and it had its own standing orders. It is also submitted that the promotions are done by the Board of Directors after taking the decision and that too while taking into account financial conditions of the unit. Other contents are denied and it is submitted that petition be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 09.04.2019:—

1. Whether the action of the respondents not to regularise the services of petitioner who is working at Nurpur Silk Mills, on completion of continuous services of 8 years is/ was improper and unjustified as alleged ? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the petitioner has no locus standi to file the present claim as alleged?

4. Whether the petitioner has no cause of action to file the present case as alleged?

5. Whether the claim petition is not maintainable in the present form, as alleged? . . *OPR*.

6. Whether the petitioner has not approached the court with clean hands, as alleged? *OPR*.

Relief.

6. I have heard learned Counsels for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	Partly yes
Issue No. 2	:	decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Issue no. 5	:	No
Issue No. 6	:	No
Relief	:	Petition is **partly allowed** per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 3 and 5

8. Both these issues are taken firstly as the respondents have not only raised both these objection seriously, but have also pressed the same with all the seriousness.

9. The Learned Counsel for the respondent has vehemently argued that the petitioner is employee of the Technical Education department and his services were absorbed in this department. He is said to have been regularized in the year 2013 in this department. It this manner, he did not remain the employee of the respondents, and thus he had no locus standi to raise the dispute against the respondents. It is further argued that the department of Technical Education is not party before the court and thus this petition is also not maintainable. The learned counsel for the petitioner, on the other hand, has refuted these arguments, and submitted that the dispute was raised at the time when the petitioner was the employee of the respondent and this petition is also maintainable and the petitioner had the locus standi to file the claim.

10. Before these arguments are dealt with, it is apposite to remind here that the labour court has no original jurisdiction to deal with any matter filed before it. The labour court is supposed to answer the references made to it by the appropriate government. Once the reference is received, the court acquires the jurisdiction under the statute to answer the same. Thus once a reference has been received by the court from the appropriate government as per the provision of Industrial Disputes Act, the court is supposed to answer the same and the petitioner is duty bound to file the claim in support of the reference. In this case also, when the reference has been received by this court at the instance of the petitioner from the appropriate government, the petitioner, therefore, has the locus-standi to file the claim as, no reference can be answered unless it is backed by the claim petition. Therefore, it can not be said that the petitioner has no locus standi to file the claim in support of this reference.

11. So far as the second argument to the effect that reference/claim is not maintainable against the respondents is concerned, the same is equally not tenable in the eyes of the law for the simple reason that the demand notice was issued by the petitioner when he was the daily wage employee of the respondents. It is clear from the footnotes appended to the reference received by this court that after the conciliation proceedings took place in the matter on the demand notice of the petitioner, the report was made by the Labour-cum-concilation Officer vide letter dated 30.08.2012. It means that the labour officer made this report on the failure of the conciliation proceedings. The petitioner was daily wage employee of the respondents on this date as he was deployed in another department *vide* letter dated 25.06.2012 and relieved vide Ext. RW1/D on 01.09.2012. Thus the proceedings were already pending in the demand raised by the petitioner when his deployment on secondment basis was made in the department of Technical Education. Even the deployment on secondment basis does not alter the parent department of the employee unless the employee is absorbed by the lending department. Thus the present dispute pertains to the period when the petitioner was working with the respondents and the labour court has to examine the dispute as on the date of demand and not on any subsequent date. The relief also relates back to the date of the demand raised and not to the date of the passing of the Award. The reference was no doubt made in the year 2014 when the petitioner was the regular employee of the department of Technical Education, but the issue referred therein related back to the date of the demand notice and completion of the proceedings before the Labour-cum-Conciliation officer, when the petitioner was the employee of the respondents. In this manner, the department of Technical Education is neither a necessary nor proper party to answer this reference, but the respondents herein are necessary parties to this reference, and the claim is fully maintainable against them irrespective of the fact that the reference was made in the year 2014 by the Appropriate Government.

12. The Learned Counsel for the respondents has further argued that the regularization policies formulated by the Government of Himachal Pradesh time to time are not applicable to the Boards and Corporation, and therefore, the petitioner has no cause of action and locus-standi to claim that his services should have been regularized in accordance with the policies. He has pointed out from the policy pertaining the year 1995 relied upon and placed on the file by the petitioner as Mark L & B placed on the record that the bare perusal of this notification makes it clear that it shall not apply to the Corporations and the Boards. The learned Counsel for the petitioner has relied upon a judgment passed by the Hon'ble High Court of H.P. in Civil Writ Petition (Original Application) No. 5554 of 2019 decided on 7th March 2022 titled Daulat Ram vs. State of H.P wherein the Hon'ble Court was pleased to place reliance on another judgment of Hon'ble High Court delivered in CWP No. 2735 of 2010 Rakesh *Kumar vs.* State of H.P, wherein reference of two orders of State Government dated 03.04.2000 and 06.05.2000 was given and order dated 03.04.2000 was reproduced as under:—

> **"In partial modification of this Department letter of even number dated 8th July, 1999 on the above subject, I am directed to say that the Government has now decided that the Daily Waged/Contingent Paid workers in all the Departments including Public Works and Irrigation and Public Health Departments (other than work-charged categories)/Boards/ Corporations /Universities, etc. who have completed 8 years of continuous service (with a minimum of 240 days in a calendar year) as on 31-03-2000 will be eligible for regularization. It has further been decided that completion of required years of service makes such daily wager/contingent paid worker eligible for consideration to be regularized and regularization in all cases will be from prospective effect *i.e.* from the date the order of regularization is issued after completion of codal formalities"…….**

13. It is thus clear from the contents of the letter dated 03.04.2000 that the Government of H.P. had decided that those daily waged/contingent paid workers in all the departments including PWD, I&PH, Boards, Corporations and Universities etc. who have completed eight years of continuous services (with a minimum of 240 days in a calendar year) as on 31.03.2000 will be eligible for regularization. This order of the State Government is thus fully applicable to the Corporations and the respondent also being a Corporation can not become exception to this order. In other words, the respondents are also governed by the aforesaid letter and the regularization policy was fully applicable in the case of the petitioner. When this is the position, the argument raised on behalf of the respondents that the policy was not applicable to them, is liable to be rejected on the face of it and it is held that the petitioner has not only the locus standi to file this claim but the claim is also maintainable in the present form as the policies of the State Government regarding regularization of the daily wager were applicable to the respondents also. Both these issues are decided accordingly.

Issues No. 1 & 4

14. Both these issues are also taken up together for the sake of convenience and to avoid repetition of evidence. It is an admitted position that the petitioner was engaged in the year 1993 as a daily wager and he remained as such till the year 2012. He was deployed on secondment basis as a daily wager in the department of Technical Education where his services were ultimately regularized in the year 2013 vide letter mark H placed on the record. The petitioner had completed a tenure of 8 years in the year 2002 and become eligible for being considered for regularization in accordance with the policy of the State Government.

15. The case of the petitioner is throughout to the effect that he made several requests in writing, copies whereof have been place by him on the record, to regularise his services as he fulfilled all the conditions for the same, but his services were never regularized. The petitioner has

named one Pushpa Devi, whose services were regularized by the respondent after 8 years of her services as daily wager. The petitioner has named another jai Karan also, whose services were also regularized in the same manner. The respondents, on the other hand, have denied the allegations as incorrect. The case of the respondents is to the effect that the workers of Nurpur Silk Mill are governed by its standing orders and the decisions regarding the regularization of the services of the workers were taken by the Board of Directors after considering the requirements and the financial condition of the Unit.

16. Once the regularization policies of the State Government are applicable to respondents, as held hereinabove, it was for the respondents to have considered the case of the petitioner under the policies after the year 2002 when he had completed 8 years services as a daily wager. It is not the case of the respondent that the case of the petitioner was considered at any point of time. The respondents have though tried to make out a case that such a decision was taken by the Board of Directors and that too after examining various factors including the financial health of the institution, yet there are neither pleadings nor evidence to suggest that the financial health of the respondent was very weak. A vague suggestion was given to the petitioner in his cross-examination to the effect that Nurpur Silk Mill was running into losses, but there are no pleadings in support of such a case. No document has been placed the record to show the exact loss the Mill was already in. No resolution passed by the Board of Directors has been placed on the record whereby they had resolved that since the financial health of the Mill was weak, therefore, it was not possible to follow the policy of the State Government to consider the cases of its daily wagers for regularization. There are neither pleadings nor evidence on the record to show that no posts were vacant against which the regularization could have been done, hence, the regularization of the petitioner could not take place. No document in the form of any resolution has been placed on the record to show the inability of the respondents to follow the regularization policy of the government. No copy of any correspondence showing the inability to implement the policies has been placed on the record. The copy of standing order Ext.RW1/B also does not provide for any defined procedure for the promotion of the workers of the unit. The statement of RW1 Shri Lokesh Kumar is very material for the purpose of this case. When he was subjected to cross-examination he tried to make out a case that regularization policy of the State Government was not applicable to them, whereas, this is not the correct position, for the reasons already explained hereinabove. He has admitted that the petitioner has represented in the mill regarding his promotion. He has also stated that two workers were regularized but explained that they were regularized after the petitioner. He in his affidavit has although tried to make out a case that it was for the Board of directors to take the decision on regularization but no material has been placed on the record to show that the case of the petitioner was ever considered for the purpose of regularization as per the regularization polices. There is no material on the record placed by the respondents to show that no post was vacant and the promotion of the petitioner could have taken place only after the post would have fallen vacant. When no material has placed on the record to show that the case of the petitioner was considered at any point of time, therefore, it held that once the regularization policy aforesaid was applicable in the case of the petitioner his case should have been considered by the respondents for the regularization on completion of eight years of his services.

17. It may also be pointed here that the Labour Court can not order the regularization of a workman directly as there is a complete mechanism to be followed by every department while considering its employees for the purpose of regularization of their services as per the regularization policy. It is also not sure that every employee who is considered for regularization shall be regularized in all events. In case he fails to fulfill the requisite conditions, the regularization does not follow automatically. In the case in hand also, in case, the petitioner was found entitled for the relief claimed, the court would have at the most directed the respondents to consider the case of the petitioner for regularization. No order for regularization of the services can be passed by the court directly. In this case, it is very much clear that the case of the petitioner was

never considered by the respondents for his regularization and no steps were ever taken despite of the fact that he had worked for 19 years in the department as a daily wager. Thus the respondents have not followed the regularization policy despite of the fact that there were strict directions of the State Government to follow the same.

18. It is an admitted fact that petitioner is not working with the respondents and he was sent on secondment basis in the department of Technical Education where he served for two years as daily wager and thereafter his services were regularized. Thus there can not be regularization of the petitioner in two departments. The crux of regularization policy is also not to regularize the services with retrospective effects. No such directions can be given by this court to consider the case of the petitioner for regularization *w.e.f.* year 2002 as it will amount to pass the orders with retrospective effects. The petitioner has himself raised demand after a gap of almost ten years in the year 2012 despite of the fact that he considered himself eligible for the regularization in the year 2002 itself. He has himself remained sleeping over his own cause for so many years and now no directions for his retrospective regularization can be passed by this court.

19. Despite of all this, the court is not deprived of the powers to grant other reliefs in favour of the petitioner which it considers fit and proper and in consonance with the requirements of the reference. The reference being adjudicated by this court, apart from the adjudication of the main relief, also requires this court to give findings on the point as to whether the petitioner is entitled for any compensation from the respondents? Thus while holding that the act of the respondents in not considering the case of the petitioner for regularization on completion of eight years of his services was not justified, it is also held that it shall not be fit and proper in the facts and circumstances discussed hereinabove to direct the respondent to consider his case for regularization on the completion of eight years of his services as the petitioner is no more working with the respondents and his services have already been regularized in the lending department in the year 2013 after his absorption. It is, therefore, held that petitioner is not entitled for the benefit of regularization with retrospective effects, back wages, seniority etc on this count, but he is held certainly entitled to receive compensation from the respondents so that he could be compensated for the inaction on the part of the respondents to consider his case for regularization as per the policy. Taking into account all the facts and circumstances of the case, the petitioner is held entitled to receive Rs.4,00,000/- (Rupees Four Lakhs only) is compensation instead of regularization with retrospective effect. hence issues no. 1 and 4 are decided accordingly.

Issues No. 2 and 6

20. In view of the findings on the issues above the petitioner is held not entitled for the benefits of regularization with retrospective effect with seniority for pensionary benefits and other consequential benefits. He is instead held entitled for lump sum compensation of Rs. 4 lakhs only from the respondents. The petitioner has approached this court with clean hands as nothing has been concealed by him. Both these issues are held decided accordingly.

RELIEF

21. In view of the aforesaid findings, it is held that the inaction of the respondents in not considering the case of the petitioner for regularization on completion of eight years of his services is not justified. It is further held that, in view of the strange facts and circumstance of the case where the petitioner is no more working with the respondents and his services have already been regularized in the department in which his services were absorbed, after he was sent on secondment basis, the respondents can not be directed to consider his case for notional regularization on the completion of eight years of his services and consider his case for back wages, seniority etc. on this count, but he is held certainly entitled to receive compensation from the respondents so that he

could be compensated for the inaction on the part of the respondents to consider his case for regularization as per the policy. Taking into account all the facts and circumstances of the case, the petitioner is held entitled to receive Rs. 4,00,000/- (Rupees Four Lakhs only) as compensation instead of regularization with retrospective effect. The aforesaid amount would be paid within four months by the respondents and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

22. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 1st day of May, 2023.

Sd/-
(HANS RAJ)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 03/2018

Date of Institution : 19-2-2018

Date of Decision : 03-05-2023

Smt. Savitri Devi w/o Late Shri Bansi Lal, (employed as sweeper) r/o Ward No. 4, Una, through Shri Vinod Kumar, Vikas Nagar, Near DAV Centenary Senior Secondary School Una, District Una, H.P. . .*Petitioner.*

Versus

The Principal, DAV Centenary Public School Una, Tehsil & District Una, H.P.
. .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Varinder Sharma, Ld. Adv.

For the respondent : Sh. Rohit Joshi, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

"Whether termination of the services of Smt. Savitri Devi w/o Late Shri Bansi Lal, (employer) as sweeper r/o Ward No.4, Una, through Shri Vinod Kumar, Vikas Nagar, Near DAV Centenary Senior Secondary School, Una, District Una, H.P. during September, 2016 by the Principal, D.A.V. Centenary Public School Una, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/Management?"

2. The case of the petitioner, in brief, as made out in the statement of claim is that she was engaged as a peon w.e.f. 4.1.2010 in DAV Centenary Public School Una and she had worked without breaks. She was paid Rs.5500/- per month as salary. The petitioner performed her duties diligently, honestly and best to her abilities and use to take care of students of nursery, and KG to class third. Her services were orally terminated by the respondent on 30.9.2016 despite of the fact that juniors were retained and fresh hands were also engaged. In this manner, the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the Act by the respondent. The petitioner raised the demand in October 2016 in which conciliation proceedings took place but without any success. The matter was therefore, forwarded by the Labour Commissioner in the shape of reference to this court for adjudication. On these averments the petitioner has prayed for her reinstatement with back wages, salary and continuity in service.

3. The respondent has though admitted the engagement of the petitioner but explained that she was infact engaged as a sweeper on rate contract basis not as a peon. The petitioner was spreading superstitious activities in the school and children as well as staff were under threat from her sorcery powers. Written complaints were received against her for taking suitable action. It is submitted that since the petitioner was engaged on rate contract basis, therefore, her services could be terminated at any time, hence no violation of any provisions of the Act has taken place. The petitioner, was infact, a threat to the reputation of the school and her continuation as such could have resulted in withdrawal of students from the school. It is submitted that the petition be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. It is submitted that no inquiry was conducted against her and her services could not have terminated in hire and fire manner hence, there was merit in the petition.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 09.04.2019:—

1. Whether termination of the services of the petitioner by the respondent during September, 2016 is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP.*

Relief.

6. When the matter was listed for evidence on 28.10.2020 neither the petitioner nor her advocate appeared and the reference was dismissed after examining the available material. The petitioner felt aggrieved by the dismissal of the claim and filed writ petition before the Hon'ble High Court of Himachal Pradesh which was allowed on 28th June, 2022. The Award was set aside and the parties were directed to put appearance before this court and lead their evidence. It is in this

manner that the evidence was recorded by this court and petitioner has examined herself as PW1 in the witness box and she also examined one Smt. Shivani as PW2. On the other hand, the respondent examined Shri Atul Mahajan, Principal of the School as RW1, apart from examining three more witnesses.

7. I have heard learned Counsel for the parties at length and considered the material on record.

8. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	Affirmative
Issue No. 2	:	Affirmative
Relief	:	Petition is **partly allowed** per operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No.1

9. The petitioner has alleged in the claim that she was engaged as peon/Aya and she worked as such till her illegal termination. The respondent, on the other hand, has come up with case that petitioner was engaged as sweeper and she remained as sweeper till the date of her termination. The learned counsel for the petitioner has argued with force that there is ample material on the record to prove that petitioner was engaged as Aya/peon and not a sweeper, and she had also worked as such, hence, the plea of the respondent that the petitioner was a sweeper was wrong on the face of it. On the other hand, the learned counsel for the respondent has relied certain documents to prove that petitioner was engaged as a sweeper and not as Aya/peon. He has also relied upon the statement of Principal as well as fellow teachers and argued that all these witnesses have stated in unison that petitioner has worked as a sweeper and not Aya, and, therefore, there are no reasons to disbelieve them.

10. Before this factual controversy can be set at rest, it needs to be reminded that this court does not exercise its original jurisdiction in the labour matters. This court assumes the jurisdiction after a reference is made by the appropriate Government. This court is supposed to limit itself to the theme of the reference and answer the reference without any addition or deletion in the same. In the case in hand, the reference is very material before commenting upon the arguments raised by the learned counsels narrated hereinabove. A careful examination of the reference shows that the appropriate Government has referred the petitioner employed a sweeper and has required this court to adjudicate upon the manner of her termination and its effects. The status of the petitioner as a sweeper has not been shown as under dispute in the reference. Had the reference been worded in a different manner showing the engagement of the petitioner as 'alleged sweeper', then this court was supposed to give a specific findings while answering the reference regarding the post proved to be held by the petitioner.

11. It may be conveniently pointed out here that the proceedings before the Conciliation-cum-Labour Officer are not bare ritualistic formality but such proceedings are very important and significant and designed intentionally by the legislature to cut short the controversy so that a limited question is posed for adjudication before the court. Whenever a demand has been raised by a workman and the employer files reply to the same, the conciliation proceedings begins. It is the

Conciliation-cum-Labour Officer to examine the contents of the demand as well as reply carefully and meticulously and only thereafter frame the question for reference. In case, the Conciliation-cum-Labour Officer finds during conciliation proceedings that the status of a particular employee with respect to the post held by him, is in dispute, such question has to be framed in the reference itself and forwarded to the court as the Conciliation-cum-Labour Officer is not a authority to adjudicate upon the intricate questions of facts and law. The duty of conciliation officer is to find out the actual dispute and then make efforts to resolve the same by way of amicable settlement. If such resolution is not possible then he is supposed to cause the disputed question referred through Appropriate Government to the labour court for adjudication. Once the reference has been received by the parties as well as by the court, the court can not travel beyond the scope of the same. In case any party to such reference finds itself aggrieved by the language used in the reference or the manner and tenor of the reference or the question posed therein, the party so aggrieved has a remedy to assail such a faulty reference by way of writ petition before the Hon'ble High Court and get the same rectified or re-framed. In case such a course is not adopted by the aggrieved party, the labour court is supposed to adjudicate upon the reference in the same manner in which it has been received and the aggrieved party forfeited its right to assail the reference before the Labour Court.

12. In the case in hand, once the parties had approached the conciliation officer and the conciliation officer after examining the demand notice, reply and rejoinder and after holding the preliminary inquiry had come to the conclusion that the petitioner was engaged as a sweeper and not the Aya/peon, he did not refer this question for determination to this court. It has been specifically recorded in the reference that Smt. Savitri Devi w/o Late Shri Bansi Lal (employed as sweeper). It means that the fact regarding the engagement of the petitioner as a sweeper was not disputed before the conciliation officer. Had it not been so, the petitioner would have raised this fact in the rejoinder filed before the conciliation officer and stressed upon conciliation officer to refer this question to the Labour Court so that she was able to lead the evidence to prove that she was working as a peon and not as a sweeper. This court, as aforesaid, not being a court original jurisdiction can not adjudicate the plea which has been raised for the first time before this court and which does not find its root in the reference. This being the legal position, this court can not now adjudicate whether the petitioner was engaged as a sweeper or she was engaged as a peon as this question has not been referred to this court by the appropriate Government and the appropriate Government had specifically referred the question regarding the petitioner employed as sweeper and this court has to presume that the petitioner was engaged as a sweeper by the respondent and not as peon. Thus the arguments of the petitioner that she was engaged as peon can not be addressed at this stage irrespective of the fact that she had led evidence on the record in order to support her plea that she was a peon and not a sweeper.

13. The learned counsel for the respondent has further argued that school is not an industry for the purpose of Industrial Disputes Act and therefore, the petitioner can not be treated as workman hence, the provisions of Industrial Disputes Act are not applicable to her. On the other hand, the learned counsel for the petitioner has argued that there are plethora of judgment of Hon'ble courts on this point and the school has been treated as an industry so far as class-IV concerned. Even the driver who is class-III employee but a skilled worker has been included in the definition of workman.

14. The respondent has relied details of salary of the petitioner as Ext.RW1/B. It shows that the working days of the petitioner right from the year 2011 till her termination. It is clear from this document that petitioner has worked for more than 240 days from the year 2011 to 2015. In the year 2016 she has worked for 168 days but in continuity. The requirement for compliance of Section 25-F of the Act is to examine the number of working days of the petitioner in the preceding 12 calendar months of his immediate termination. In this case also, when the working days of the

petitioner are counted from September 2016 to August 2015 in reverse order it is very much clear that she has worked for more than 240 days before her termination.

15. The learned counsel for the respondent has argued that petitioner was not a daily wager but she was engaged on contract basis. He has relied upon a document being extract of register of employees Ext.RW1/C. Learned counsel for the petitioner, on the other hand, has argued that no contract has been shown to the court by the respondent, and therefore, this plea is false on face of it. It is true that Ext.RW1/C shows that the petitioner was engaged on 25.4.2011 but no such contract has been placed on the record by the respondent. The contract entered in between employer and employee is an important document and it has to be placed on the record so that court is able to examine terms and conditions of such contract. When no such contract has been placed on record, the presumption goes that this plea has merely been taken to frustrate the claim of the petitioner. In case the petitioner was engaged on contract basis right from the year 2011 to 2016 then as many as five contracts (yearly basis) must have been entered between both the parties. any such contract could have been placed on record to show that petitioner was not a daily wager but she was engaged on contract which was for a specified time and she could not have claimed any right beyond the period of contract. When document Ext.RW1/C is carefully examined, it is clear that even the date of retirement of the petitioner has shown 2032. Had she been engaged on contract, such contract would have come to an end annually followed by another fresh contract. The respondent has although examined Principal of the school Shri Atul Mahajan as RW1 yet he has not stated in many words that the petitioner was engaged on contract in the year 2016 as well. He has tried to refer the fact of rate contract in para no.3 of his affidavit. It was his duty to have placed on the record the contract which was signed by the petitioner in order to accept the terms and conditions of the same. When such an important document has been withheld from the court, the presumption goes that such document does not exist at all Smt. Sudesh Kapil has appeared as RW2 and her affidavit is Ext.RW2/A. She has made stated same facts. Rather this witness along-with two other witnesses Smt. Madhu Arora and Shri Rakesh have tried to make out a case that the indulged in the acts of black magic . The petitioner, on the other hand, has specifically stated that she was a daily wager and had worked for 240 days in all the years before her termination. She has further tried to make out a case that her termination took place for the reason that her case had have fallen in the zone of regularization and thus it was for the school to regularize her services. Since it is established on the record that petitioner has completed 240 days in the period of twelve calendar months preceding her termination, therefore, there was requirement of notice under Section 25-F of the Act, in case, the respondent did not want to continue with the petitioner for any reasons. Since compliance of Section 25-F has not been made in this case, therefore there is violation of the same.

16. The case of the respondent is to the effect that the activities of the petitioner were suspicious as she had started professing sorcery in the school and used to terrorized the school staff as well as children of even consequences by way of black magic. The petitioner had denied these allegations and come up with the case that main reason to terminate her service were to prevent her regularization as per the policy of the school.

17. It may be stated here that in case there was serious allegations upon the petitioner, she could not have been terminated without there being domestic inquiry. Every allegations against a worker has to be investigated in an domestic inquiry, and in case, the allegations are established only then penalty can be imposed. No worker can be thrown out straightway from the work whenever there are allegations against him/her. In the case in hand, although the Principal of the school and other staff members namely Smt. Sudesh Kapil, Smt. Madhu Arora and Shri Rakesh Kumar as RW2 to RW4 have tried to make out a case that petitioner had started professing sorcery in the school and they was a sense of terror amongst the staff and students yet this evidence can not be looked into by this court for any purposes as the domestic inquiry was not conducted and guilt of the petitioner was not held as proved. The petitioner has completed 240 days in 12 calendar month preceding her termination, her services could have been terminated only in two ways only. Firstly, her services could have been terminated by complying the provisions of Section 25-F of the Act, in

case, her services were no more required as she was the junior most amongst the class-IV. Secondly, when there were allegations against her, the requirement was that domestic inquiry be conducted in which she was supposed to be given complete opportunity to defend herself. In case her guilt was established in the domestic inquiry, the respondent could have terminated her services. Since no such procedure was followed, therefore, termination of her services is bad in the eyes of law.

18. The petitioner has alleged that workmen junior to her were retained and fresh hands were also engaged after her termination. The petitioner has tendered her affidavit Ext.PW1/A wherein she has specifically stated in para no.6 that new person were engaged after her and workers junior to her are still retained. There is no cross-examination on this aspect and this evidence has absolutely on unchallenged. Shri Atul Mahajan, the Principal of school has appeared as RW1 in the witness box and he has also not sworn the affidavit to the effect that no new/fresh hand was engaged after the termination of the petitioner. During his cross-examination he has admitted that after termination of the services of the petitioner new employees were recruited in the school. It shows that the respondent has violated provisions contained in Section 25-H of the Act as the fresh hand could not have been engaged without giving an opportunity and priority to the petitioner as no domestic inquiry was held against her and the allegations against her were not established. Thus violation of Section 25-H of the Act was caused by the respondent in this case. Violation of Section 25-H of the act is therefore, established. Issue no.1 is held decided in affirmative.

ISSUE NO. 2

19. Since the issue no.1 is held in affirmative and it has been held that the services of the petitioner were terminated illegally and without following the procedure of law and in violation of Sections 25-H of the Act, therefore, payment of compensation is not a remedy. The petitioner is entitled for reinstatement as she has agitated the matter at once and there is no reference regarding the delay and its impact to this court. The petitioner has raised issue at once and therefore, she is entitled for reinstatement. So far as back wages are concerned, the petitioner has alleged that she was unemployed and no evidence has been led by the respondent that the petitioner has earning by doing some other work. Therefore she is held entitled for back wages. Taking into account in totality the facts and circumstances it will be appropriate to grant lump sum of Rs. 50,000/- (Fifty Thousands only) in lieu of back wages. This issue is also held decided in affirmative.

RELIEF

20. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondent is directed to reinstate the services of the petitioner as sweeper forthwith. The petitioner is entitled for seniority and continuity in service from the date of her termination. However, the petitioner is also held entitled for Rs. 50,000/- (Fifty Thousands only) as token money as back wages, which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 3rd day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	:	82/2021
Date of Institution	:	13-07-2021
Date of Decision	:	08-05-2023

Shri Vijay Pal Sharma s/o Shri Veer Chand, r/o Village Dhakhun, P.O. Kitpal, Tehsil Nadaun, District Hamirpur, H.P. . .*Petitioner.*

Versus

1. The Nodal Officer, M/s. Link Utsav Ventures Private Limited, F-119, Maya Puri, Industrial Area, Phase-2, New Delhi-110064 (Employer).

2. The State Head, M/s Rojmerta Private Limited, Near RTO Office, Dharamshala, District Kangra, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	None for the petitioner
For Respondent	:	Sh. Rakesh Bharti, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

"Whether the termination of services of Shri Vijay Pal Sharma s/o Shri Veer Chand, r/o Village Dhakhun, P.O. Kitpal, Tehsil Nadaun, District Hamirpur, H.P. during May, 2020 by (i) the Nodal Officer, M/s Link Utsav Ventures Private Limited, F-119, Maya Puri, Industrial Area, Phase-2, New Delhi-110064 (Employer), (ii) the State Head, M/s Rojmerta Private Limited, Near RTO Office Dharamshala, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled from the above employer?"

2. It may be stated here that the notice was issued to the petitioner for 8th May, 2023 for his appearance before the court at Dharamshala which was served upon him personally. Despite of this, the petitioner did not appear before this Court. Since there are neither pleadings nor evidence in support of the reference, the reference is answered in negative. Parties are left to bear their costs.

3. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 8th day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 36/2017

Date of Institution : 07-1-2017

Date of Decision : 08-05-2023

Shri Ramesh Kumar s/o Shri Madho Ram, r/o Village Uppar Rajot, P.O. Rakkar, Tehsil Baijnath, District Kangra, H.P. . .*Petitioner.*

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalaya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. . .*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. N. L. Kaundal, Ld. AR
: Sh. Rajat Chaudhary, Ld. Adv.

For the respondent(s) : Smt. Rajni Katoch, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

> **"Whether the verbal termination of services of Shri Ramesh Kumar s/o Shri Madho Ram, r/o Village Uppar Rajot, P.O. Rakkar, Tehsil Baijnath, District Kangra, H. P. by (1) The Vice Chancellor, Chaudhry, Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry, Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. w.e.f. 01.09.2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?"**

2. The case of the petitioner, in brief, is to the effect that he was engaged as daily wage beldar in Organic Agriculture department w.e.f. April 2006 by the respondents and he worked in continuity till 1.9.2010. Neither any identity card, nor casual card nor wage card was issued in his favour and no appointment letter was also issued by the department. He worked with hard work, diligence and honestly without any complaint but his services were terminated orally by the respondents w.e.f. 1.9.2010. As per the petitioner, a Union named and styled as HP Krishi Vishvavidyalaya Mazdoor Sangh was working in the respondent University and it had raised certain demands in the year 2009. Efforts were made to fix these demands in the meetings between the Mazdoor Sangh and the respondents but the demands were not accepted vide letter issued in

September 2009. In this background, the services of the petitioner and other workmen have been terminated verbally and they are directed to join outsourcing agency M/s Sahayta Security Services Pvt. Ltd. A reference being Reference No. 297/2010 was also made by Appropriate Government to this court to adjudicate the demands of the workmen of the Union operating in respondent's University and while the reference was pending 200 more workmen were terminated from different department in March, 2010 by the respondent and the litigation ensued between them and one reference was withdrawn on some technical ground. The respondent is said to have started outsourcing the services now through various outsource agencies and the services of petitioner and similarly situated workers have not been re-engaged despite of the demands and conciliation. The respondent has engaged one Smt. Promila Devi in the year 2000 for 89 days and later on she was regularized whereas, similar treatment is not being given to similarly situated workers. The respondent is also said to have changed the service conditions of the petitioner in the year 2011 by taking his services through outsourcing agency. On these averments, the petitioner has prayed for the relief of reinstatement of his services with all benefits and has prayed that his case for regularization be considered in the in which the services of Mrs. Promila Devi were regularized after seven years of her work.

3. The respondent has resisted and contested the claim and termed the same as not maintainable for the simple reason that the University had adopted the policy decision of the State Government, finance department circulated in the year 1998 whereby a complete ban was imposed upon the engagement of a daily paid labourer unless the sanction was received from the finance department. It is explained that no daily paid labour was engaged by the University after adopting this notification and there was no question of engaging the services of the petitioner as a daily paid labourer in the year 2006. It is explained that the petitioner has worked in a project as a petty contractor and he use to raise his bills and bills were paid after certifying the work, hence he was not a daily wager and his muster roll was not maintained. The petitioner was paid from the grant-in-aids of the University and the bills were cleared by the PLIs of the project out of the project fund. It is submitted that petitioner was never engaged as daily wage beldar. Seniority list of the DPL was circulated every year and the petitioner has never raised any objection on finding that his name was not included in the list. The respondent has further explained that now the works of the University are being executed by requisitioning the labour on outsource basis. In the year 2010-2011 to M/s Sahayata Security Services Pvt. Ltd. has supplied its labourer and in the year 2011-2012 and 2012 to 2015 other outsource agencies have supplied the labour. So far as litigation in between Mazdoor Sangh and University was concerned, it is submitted that it had no connection with the case of the petitioner. Smt. Promila Devi is said to have been appointed as Data Entry Operator on contractual basis and not a daily paid labourer and her services were regularized as per the policy framed by the Government and there was no parity between her case and the case of the petitioner. Denying other allegations as it is incorrect. It is submitted that as there is no case for his reinstatement and other relief hence the claim be dismissed.

4. The petitioner has filed the rejoinder and re-affirmed the averments made in the petition and denied those made in the reply. It is highlighted that no contract was executed with the petitioner and therefore, it can not be said that he was a petty contractor.

5. From the pleadings of the parties and keeping in mind the language of the reference received, following issues were framed on 24.06.2019 for determination:—

1. Whether the verbal termination of the services of the petitioner by the respondents w.e.f. 01-09-2010 is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? . .*OPR.*

5. Whether this Court has no jurisdiction to try the present case, as alleged? . .*OPR.*

6. Whether the petitioner is/was not daily paid labourer of the respondents, as alleged? . . *OPR.*

7. Whether the petitioner has not approached this Court with clean hands and has suppressed true and material facts, as alleged?

Relief.

6. I have heard learned Authorized Representative/counsel for the petitioner as well as learned counsel for the respondents at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Yes

Issue No. 7 : Yes

Relief : Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1, 2 & 6

8. All these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The petitioner has not placed on record any document in support of his case. No mandays chart has been tendered on the record and the respondents has explained that since the petitioner was not engaged as daily paid labourer, therefore, there was no reason to issue any muster roll in favour of any workmen including the petitioner. The petitioner has merely led oral evidence and that too his self serving statement without there being any corroboration from any other witness. He has appeared as PW1 in the witness box and his affidavit sworn in evidence is replica of the claim petition as all the averments made in the claim have been reproduced in the affidavit. When the petitioner was subjected to cross-examination he admitted that no document

was placed by him on the record to prove his employment. He volunteered that no such appointment letter was issued in his favour. He has admitted that tentative seniority lists were circulated by Registrar University in the year 2007-2008 which are Ext.R1 and Ext.R2. He has also admitted that his name did not figure in any of the lists. Had the petitioner infact worked on muster roll basis as a daily paid labourer with the respondent his name would have figured in the seniority list. The petitioner was subjected to further cross-examination and he explained that he had made complaint regarding this fact to the administration. He has not placed on such document on the record and has rather tried to justify his statement on the excuse that he has made an oral complaint. In case, the petitioner has a realization in the year 2007-2008 that he was not being treated a daily paid labourer he would have raised the objections in writing and not put off the things so lightly. Since the petitioner himself knew that he was not a daily paid labourer engaged on muster roll, therefore, on finding that his name was not included in the seniority lists for the year 2006 and 2008 he remained silent and did not correspond with the University in protest. The petitioner could have raised the demand finding that his name was not been referred in the lists. Such a conduct of the petitioner is suggestive of the fact that he was not a daily paid labourer but he was working in project being run in the University.

10. It may be stated here that the University receives several projects which are for research purpose and workers are required in such projects. The projects are for specific period and once the purpose of the project is over, the employment of the workers engaged to run the project smoothly comes to an end. It is for this reason that the daily wagers are not engaged in such projects as such daily wagers becomes the employee of the University as soon as the work of project is over, and it becomes difficult to adjust them in the absence of sanctioned posts. Specific and separate funds are allocated to run the projects and the payment of the wages to the workman engaged in the completion of the project are also made from those funds. The University does not pay any wages to such workers from its own fund. These facts have been specifically mentioned in the reply and spoken on oath by the witness examined by the respondent. There is no denial of the same by the petitioner. The case of the respondent is very specific and to the effect that petitioner was engaged for a particular project and he was paid from the grants allocated for the project, and therefore, he was not a daily wager. The petitioner was also cross-examined on this aspect and he started pleading his ignorance to the fact that the separate budget was allocated to run these projects. He admitted that seasonal workers were required for these purposes. It is also very much clear from the case of the respondents that engagement of daily paid labourers was discontinued in the year 1998 itself and when such is the position why the respondent shall engage the services of daily paid labourer against the instructions of the Government. The respondent, on the other hand, has examined Dr. S.P. Dixit, Director of Research, CSKHPKV, Palampur as RW1. He has tendered on record copy of letter dated 8th July, 1998 Ext.RW1/B, copy of notification dated 13.11.1998 Ext.RW1/C and copies of details of the works Ext.RW1/D to Ext.RW1/G. When these documents are examined it is clear from Ext.RW1/B that there are clear cut directions from the Government of H.P. not to engage daily paid labourer unless approval is obtained from the Finance department. When the University was conscious of this letter, there was no question of engaging the petitioner as daily paid labourer in the year 2007. Ext.RW1/C is similar letter whereby the engagement of daily paid labourer was discontinued. Ext.RW1/D, Ext.RW1/E, Ext. RW1/F and Ext.RW1/G are copies of those bills which have been signed by the petitioner. It is very much clear that these bills were raised by the petitioner himself as he has signed the bill and addressed the same to the Head of the department. He has also filled his payment in the same and amount was approved as per rules and paid to him. He has been shown as petty contractor working on bill basis. Had the petitioner been engaged as daily paid labourer a muster roll would have been issued in his favour and his presence would have been marked in the same. The petitioner has not led any evidence in rebutted to prove that he was not engaged to any project but he was the employee of the respondents university. The petitioner has not examined other colleagues in the witness box to support his case. Had any such colleague been examined, the court would have examined his evidence and relied

upon the same. When Dr. S.P. Dixit was subjected to cross-examination he explained that petitioner was treated as contractor though no agreement was entered with him. It may be stated here that no agreement generally executed for the petty contractors. The work is assigned to him orally and the contractor raised bill which is finally passed by the department and therefore there was no need to enter contract with a such petty contractor.

11. Thus in case the petitioner was engaged as daily paid labourer his name would have appeared in the seniority lists. Since the petitioner has not raised objection on this point that his name was not entered in the seniority lists for 2007-2008, his conduct in raising the demand in the capacity of a daily paid labourer in the year 2015-2016 seems an afterthought to seek employment in the University. The petitioner's bonafides are not made out from his conduct. Moreover neither any muster roll was issued in favour of the petitioner nor the University was engaging any daily paid labourer after the year 1998. Therefore, there was no question for appointing the petitioner as daily paid labourer in the year 2006. As aforesaid the project for a specific period and specific amount is allocated for the completion of the same and once the project is completed that mater ends and no workman can claim any relief in such situation and the contend that job be given to him further. A project is like a contract for a specific period and once the project is over everything is over. The petitioner therefore, has failed to prove that he was engaged as daily paid labourer and his services were terminated without following the requirements of the Industrial Disputes Act. It is also held that there was no requirement to hold any inquiry at the end of the project and the petitioner has thus failed to make out a case for violation of any provisions of the Industrial Disputes Act and petitioner is therefore not entitled for any relief as claimed by him. Issues no.1, 2 and 6 are held in negative.

ISSUES No. 3, 4, 5 & 7

12. Claim petition is maintainable for the reason that it has been filed in support of the reference. It is different matter that the petitioner has failed to stand by his claim on merits. The petitioner has the locus standi to file the claim as it has been filed in support of the reference received by this court on behalf of the petitioner. The petitioner further has no cause of action for the reasons that his services were not engaged as daily paid labourer hence there was no question of termination his services. This court has the jurisdiction to try the claim as this court acquires the jurisdiction on receipt of the reference. The petitioner has certainly not come to the court with clean hands as he has suppressed the facts to the effect that he had worked in a project and this fact is revealed from the reply of the respondent, hence issues no. 3 to 5 are held decided in favour of the petitioner as well as issue no.7 is decided in favour of the respondent.

RELIEF

13. In view of my above discussions, the present claim petition merits dismissal and is accordingly dismissed. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 8th day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 108/2017

Date of Institution : 31-3-2017

Date of Decision : 09-05-2023

Shri Shashi Kumar s/o Shri Desh Raj, r/o Village Amtrar, P.O. Sunehar, Tehsil and District Kangra, H.P. . . *Petitioner.*

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, (CSKHPKV) Palampur, District Kangra, H.P. ...*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. N.L.Kaundal, Ld. AR

For the respondent(s) : Smt. Rajni Katoch, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

> **"Whether the action of the employer i.e. (1) The Vice Chancellor, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. (2) Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. not to regularize the services of Shri Shashi Kumar s/o Shri Desh Raj, r/o Village Amtrar, P.O. Sunehar, Tehsil and District Kangra, H.P. w.e.f. 01.01.2010 on the post of Lab Field Assistant after completion of continuous service of 8 years, as per policy of the Himachal Pradesh Government, as alleged by the workman, is legal and justified? If not, what relief of regularization of services, seniority and past service benefits above aggrieved workman is entitled as per demand notice dated 21.04.2014 from the above employer?"**

2. The case of the petitioner as made out from the claim is that he was initially engaged by HOD of soil science department of respondent University in April 2002 on daily wage basis/contractual basis and he worked as such till December 2003 without any break and discharged his duties satisfactorily. His services were adjusted/transferred in the department of Centre Geo Informatics Research and Training department in January 2004 and he performed his duties till December 2006 in the capacity of Lab Helper. In between December 2006 to February 2008, he discharged his duties as supervisor of HOD and for collection of data completion on daily data in Geo Informatics Centre of Research and Training department. He was transferred to Store Keeping office where he worked till 2009. He used to prepared all the bills and other material required by

the respondent. He claims that he has worked for more than 8 years till 31.3.2010 and he was entitled for his regularization in the post of clerk/lab assistant. Some other persons namely Shri Kulwant Singh s/o Shri Nek Ram and Shri Suresh Chand s/o Shri Bhim Singh were regularized after eight years of their services and Kumari Promila Devi was also regularized in the same manner but the respondent was not regularizing the services of the petitioner and thus unfair labour practices were being exercised against him. The demand was raised by him regarding his regularization in which the conciliation proceedings took place and ended in failure, hence the appropriate Government has made the presentReference. On these averments the petitioner has prayed for an award directing his regularization as he had already completed eight years in the University.

3. The respondent resisted and contested the petition and claimed that it is not maintainable for the reason that petitioner was not a workman and he was not engaged on muster roll bases. A separate seniority list of muster roll based labourer was maintained in the year 2006 and 2008. The name of the petitioner was not there and he did not raise any objection. It is the case of the respondent that the petitioner has worked on various adhoc projects on contract basis during the year 2002 to 2009 and he used to raise the bills for the work performed and was paid from the funds allocated for the project. The projects were for a specific period and as soon as projects were over, the employment also came to an end. From 2014 to 2016 also the petitioner has worked on same project and he was working in similar projects long back, and since he was not a daily paid labourer, therefore, there is no question of regularizing his services in the manner as prayed by him.It is submitted tha the claim is without any merits, and be therefore, dismissed.

4. The petitioner has filed the rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. From the pleadings of the parties and keeping in mind the language of the reference received, following issues were framed on 24.06.2019 for determination:-

1. Whether the action of the respondents not to regularize the services of petitioner w.e.f. 01.01.2010 on the post of Lab Field Assistant, as per policy of the State Government is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? . .*OPR.*

5. Whether this Court has no jurisdiction to try the present case, as alleged? . .*OPR.*

6. Whether the petitioner is/was not daily paid labourer of the respondents, as alleged? . .*OPR.*

7. Whether the petitioner has not approached this Court with clean hands and has suppressed true and material facts, as alleged?

Relief

6. I have heard learned Authorized Representative/counsel for the petitioner as well as learned counsel for the respondents at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	Negative
Issue No. 2	:	Negative
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Issue No. 6	:	Yes
Issue No. 7	:	Yes
Relief	:	Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1, 6 & 7

8. All these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The petitioner has appeared as PW1 in the witness box and tendered on record copy of affidavit Ext.PW1/A, demand notice Ext.PW1/B and details of contractual works performed by him as Ext.PW1/C. He also tendered on record various letters of various dates Ext.PW1/D to Ext.PW1/K. In his cross-examination he admitted that he had not worked on any sanction post. He denied that he had not worked in the manner as alleged. He was confronted with two seniority lists Ext.R1 and Ext.R2 and he admitted that his name did not appear in these seniority lists. When he was asked as to whether he has raised any objection to the seniority lists not finding his name therein, he stated that the objection was raised by him to the Vice Chancellor. No copy of any such written objection had been placed by him on the record. He denied other suggestions and pleaded ignorance to most of the questions. The documentary evidence is very material and sufficient to clinch the issue involved in this Reference. The petitioner has himself tendered on record attendance chart Ext.PW1/C in which he is shown to have worked on contract basis. A contractor can not be a daily wager and a person who works on contract can not claim himself as a daily wager. He has tendered on record letter regarding award of fellowship to him as Ext.PW1/D. It is clear from this letter that he was selected to work in a project and he was to receive Rs.6000/- per month. There are specific terms and conditions appended to this fellowship letter and the petitioner accepted the same.As per the terms and conditions, this fellowship was co-terminus with the project and it could even be discontinued earlier. It is thus very much clear from this letter that once the project was over, the employment was also over with no lien or right to be retained. Similar are the letters Ext.PW1/E and Ext.PW1/F. These letters also show that petitioner was not a daily wager but he was engaged to work in the project and such engagement was supposed to come to an end on its completion. The project was being executed on a specific budget allocated for the same and University was not paying for this project. The petitioner has placed office order Ext.PW1/G to Ext.PW1/K on the record and these office orders also show that the petitioner has worked in this

particular projects on contract basis. These letters prove that the petitioner was not a daily wager but he was bound by a contract to work on a particular project and the employment was to come to an end at the end of the project. The respondent on the other hand, has tendered on record letter Ext.R1 showing the seniority list and this seniority list was also put to the petitioner. Ext.R2 is another tentative seniority list. In the year 2007-2008 the seniority list was circulated and petitioner's name was not in these lists. Petitioner did not raise any objection and it is therefore, clear that he has never treated himself as a daily wager. Had he been engaged as a daily wager he should have raised an objection and questioned these documents for not mentioning his name. Ext. RW1/B is a letter dated July 1998 of State Government circulated to all the departments whereby a complete ban was imposed upon engagement of daily paid labourer except after obtaining financial sanction from the finance department. When the University had adopted this letter in the year 1998 there was no question of engaging the petitioner as daily paid labourer without obtaining prior permission from the government. This letter also proves that the respondent neither intended not it has engaged the petitioner as a daily paid labourer and he was, infact, engaged on contract and that too in a specific time bound projects which were even not funded by the University. These projects aremeant for the research purposes in the University and the same were to come to an end on their completion. The respondent has placed on record contingent bills in the name of the petitioner Ext.RW1/D1 to Ext.RW1/D10. These bills show that petitioner was not paid any daily but he used to raise the bills and payment was made against the same. Ext.RW1/D11 is also a similar bill raised by the petitioner. Ext.RW1/J is a letter issued to award fellowship to the petitioner and it was with respect to a time bound project and it has categorically been mentioned in this letter that the fellowship shall come to an end at the end of the project. Ext.RW1/K and Ext.RW1/L are similar letters. Ex.RW1/M and Ext.RW1/N are the bills raised by the petitioner in the project and these bills were also settled. All these documents show that petitioner was not engaged as daily paid labourer and he had rather worked in a specific projects which were time bound and there were specific terms and conditions settled with the petitioner to the effect that his employment would come to an end at the end of the project. The case of the petitioner is not covered in the definition of workman and he has failed to prove that he has worked as daily wager with the university for more than eight years. The respondent has examined Dr. S.P. Dixit as RW1 and he has also explained all these facts in his affidavit. He was cross-examined wherein he has explained time and again that the petitioner was not a daily paid labourer but he has worked in time bound projects and the services of the workers stood automatically terminated as soon as project was over. He has referred to the terms and conditions of fellowship. There is nothing in his statement to show he was either concealing the truth or the facts were otherwise. The petitioner has thus failed to prove that he was a daily paid labourer and has worked with the respondent on daily wage for more than eight years. When this is the position, the petitioner is not entitled for regularization as claimed by him and he has not approached the court with clean hands. He knew it fully that he was engaged in a projects and he conceal all these facts and claimed that he was engaged as daily paid labourer. The actual facts were highlight and proved by the respondent. Issue no.1 is proved against the petitioner and issues 6 and 7 in favour of the respondents.

ISSUE NO. 2

10. In view of findings on the issues above, the petitioner is held not entitled for any relief as claimed by him, hence, this issue is decided in negative against the petitioner.

ISSUES No. 3 to 5

11. Claim petition is maintainable for the reason that it has been filed in support of the reference. It is different matter that the petitioner has failed to stand by his claim on merits. The petitioner has the locus standi to file the claim as the claim has been filed in support of the reference received by this court on behalf of the petitioner. The petitioner further has no cause of

action for the reasons that his services were not engaged as daily paid labourer hence, there was no question of termination his services. This court has the jurisdiction to try the claim as this court acquires the jurisdiction the moment a Reference is received by it. In the case in hand, since the reference received from the appropriate Government therefore the court has jurisdiction. Hence issues no. 3 to 5 are held decided in favour of the petitioner.

RELIEF

12. In view of my above discussions, the present claim petition merits dismissal and is accordingly dismissed. Parties are left to bear their own costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 9th day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	:	107/2017
Date of Institution	:	31-3-2017
Date of Decision	:	10-05-2023

Shri Shamsher Singh s/o Shri Pushpal Singh Parmar, r/o Village Harluthan, P.O. Silh, Tehsil Dehra, District Kangra, H.P.

. .*Petitioner.*

Versus

1. The Vice Chancellor, Chaudhery Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, (CSKHPKV) Palampur, District Kangra, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. N.L.Kaundal, Ld. AR
For the respondent(s)	:	Smt. Rajni Katoch, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

"Whether the action of the employer *i.e.* (1) The Vice Chancellor, Chaudhery Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. (2) Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. not to regularize the services of Shri Shamsher Singh s/o Shri Pushpal Singh Parmar, r/o Village Harluthan, P.O. Silh, Tehsil Dehra, District Kangra, H.P. w.e.f. 01.01.2009 on the post of Field Assistant after completion of continuous service of 8 years, as per policy of the Himachal Pradesh Government, as alleged by the workman, is legal and justified? If not, what relief of regularization of services, seniority and past service benefits above aggrieved workman is entitled as per demand notice dated 21.04.2014 from the above employer?"

2. The case of the petitioner as made out from the claim is that he was initially engaged by dairy farm department of respondent university in January, 2001 on daily wage basis/contractual basis and he worked as such till December 2001 without any break and discharged his duties satisfactorily. His services were adjusted/transferred in the department of Soil Science in the January 2002 and he performed his duties till December 2002 on daily wage basis in between January 2001 to December. His services were again taken in vegetable science and floriculture department in between 2003 to 2011 without any break. As per him, he has worked for more than 8 years till 31.12.2008 and he was entitled for his regularization in the post of clerk/lab assistant. Some other persons namely Shri Kulwant Singh s/o Shri Nek Ram and Shri Suresh Chand s/o Shri Bhim Singh were regularized after eight years of their services and Kumari Promila Devi was also regularized in the same manner but the respondent has not regularized the services of the petitioner and thus unfair labour practices were being exercised against him. The demand was raised by him regarding his regularization. Conciliation proceedings- took place but failed and the appropriate Government has made the reference under the Act for adjudication by this court. On these averments, the petitioner has prayed for his regularization as he had already completed eight years continuous service in the university, and was thus entitled for the benefits under the regularization policy of the State Government.

3. The respondent has resisted and contested the petition and claimed that it is not maintainable for the reason that petitioner was not a workman and he was not engaged on muster roll bases. A separate seniority list of muster roll bases labourer was maintained in the year 2006 and 2008. The name of the petitioner was not there and he did not raise any objection. It is the case of the respondent that the petitioner has worked on various adhoc projects on contract basis during the year 2002 to 2009 and he used to raise the bills for the work performed and was paid out of the funds allocated for the project. The projects were for a specific period and as soon as project was over employment would also come to an end. Other allegations are denied and it is stated that in view of the position explained hereinabove, The petitioner was not entitled for any relief.

4. The petitioner has filed the rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. From the pleadings of the parties and keeping in mind the language of the reference received, following issues were framed on 24.06.2019 for determination:—

1. Whether the action of the respondents not to regularize the services of petitioner w.e.f. 01.01.2009 on the post of Field Assistant, as per policy of the State Government is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? . .*OPR.*

5. Whether this Court has no jurisdiction to try the present case, as alleged? . .*OPR.*

6. Whether the petitioner is/was not daily paid labourer of the respondents, as alleged? . . *OPR.*

7. Whether the petitioner has not approached this Court with clean hands and has suppressed true and material facts, as alleged?

Relief

6. I have heard learned Authorized Representative/counsel for the petitioner as well as learned counsel for the respondents at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	Negative
Issue No. 2	:	Negative
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Issue No. 6	:	Yes
Issue No. 7	:	Yes
Relief	:	Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1, 6 & 7

8. All these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The petitioner has appeared as PW1 in the witness box and tendered on record copy of affidavit Ext.PW1/A, demand notice Ext.PW1/B and details of contractual works performed by him as Ext.PW1/C. He also tendered on record copy of letter dated 7.12.2011 Ext.PW1/D. In his cross-examination he admitted that he had not worked on any sanction post. He denied that he had not worked in the manner as alleged. He was confronted with two seniority lists Ext.R1 and Ext.R2 and he admitted that his name did not appear in these seniority lists. When he was asked as to whether he has raised any objection to incorrect seniority lists, he stated that the objection was raised by him to the Vice Chancellor. No such document containing such objection has been placed on the record by him. He has denied other suggestion and pleaded ignorance to most of the questions. The documentary evidence is very material and sufficient to clinch the issue. The petitioner has himself tendered on record attendance chart Ext.PW1/C in which he has been shown to have worked on contract and that too on a particular project. A contractor can not be a workman. He has tendered on record letter regarding fellowship to him Ext.PW1/D. It is clear from this letter that he was interviewed and selected for fellowship. He was to receive Rs.6000/- per month. It has been specifically mentioned in this letter that the fellowship was co-terminus with the project and it could even be discontinued earlier. It is thus very much clear from this letter that once the project was over the employment was also over with no lien or right to be retained. The petitioner has accepted the terms and conditions and only then he was permitted to work. The project was being executed on a specific budget allocated for the same and University was not paying anything to support this project. This letter proves that petitioner was not a daily wager but there was a contract worker and he has joined the work after agreeing to the terms and conditions. He was fully conversant of the fact that the work will come to an end at the end of the project. He has worked in various projects one after one. The respondent on the other hand has tendered on record letter Ext.R1 showing the seniority list and this seniority list was also put to the petitioner. Ext.R2 is another tentative seniority list. In the year 2007-2008 the seniority list of daily paid labour was circulated and petitioner's name was mentioned in these lists. Petitioner did not raise any objection and it is therefore, clear that he has never treated himself as now a daily paid labour. Had he been engaged as a daily paid labour, he would have raised the objection and questioned these documents for not mentioning his name. Ext. RW1/B is a letter dated July 1998 of State Government circulated to all the departments whereby a complete ban was imposed upon engagement of daily paid labourer except after obtaining financial sanction from the finance department. When the university had adopted this letter in the year 1998 there was no question of engaging the petitioner as daily paid labourer without obtaining prior permission from the government. This letter also proves that the respondent has never intended to engage the petitioner as daily paid labourer and he was engaged on contract and that too in a specific time bound projects which were even not funded by the University. Once these research related works use to come to an end, the contract of employment would also cease to operate and for this reason the petitioner was given the work in any other projected starting after the end of the first project. Since the research related projects are not type of permanent work, therefore, no worker could have claimed permanent employment or status of daily wager by working in the same. The respondent has placed on record contingent bill in the name of the petitioner as Ext.RW1/D to Ext. RW1/G. These bills show that petitioner was not paid any daily but he used to raise the bills and payment was made against the same. Ext.RW1/J is a letter issued to award fellowship to the petitioner and it was with respect to a time bound project and it has categorically been mentioned in this letter that the fellowship come to an end at the end of the project. All these documents were shows that petitioner was not engaged as daily paid labourer and he had rather worked in a specific projects which were time bound and there were specific terms and conditions settled with the petitioner to the effect that his employment come to an end with the end of the project. Ext. RW1/H is the Certificate of experience issued in favour of the petitioner and it also shows that he was working in the research projects and not on daily wage basis. The case of the petitioner is, thus not covered in the definition of workman and he has failed to prove that he has worked on daily wage basis with the University for more than eight years. The respondent has examined Dr. S.P. Dixit as RW1 and he has also explained all these facts

in his affidavit. He was cross-examined wherein he has explained time and again that the petitioner was not a daily paid labourer but he has worked in time bound projects and the services of the workers stood automatically terminated as soon as project was over He has referred his terms and conditions of fellowship there is nothing in his statement that he was either conceal the truth the facts were otherwise. The petitioner has thus failed to prove that he was a daily paid labourer and has worked with the respondent on daily wage for more than eight years and when such is the position, he is not entitled for regularization as claimed by him and he has not approached the court with clean hands. He was fully conversant of these facts and despite of this he concealed them all and claimed that he was engaged as daily paid labourer. These facts were highlight and proved by the respondent. Thus for the aforesaid discussion, Issue no.1 is proved against the petitioner and issues 6 and 7 in favour of the respondents.

ISSUE NO. 2

10. In view of findings on the issues above, the petitioner is held not entitled for any relief as claimed by him, hence, this issue is decided in negative against the petitioner.

ISSUES No. 3 to 5

11. Claim petition is maintainable for the reason that it has been filed in support of the reference. It is different matter that the petitioner has failed to stand by his claim on merits. The petitioner has the locus standi to file the claim as it has been filed in support of the reference received by this court on behalf of the petitioner. The petitioner further has no cause of action for the reasons that his services were not **engaged as daily paid labourer hence there was no question of regularization of the same**. This court has the jurisdiction to try the claim as this court acquires the jurisdiction as soon as the reference is received by the court. In the case in hand, since the reference was received from the appropriate Government, therefore, the court has jurisdiction. hence issues no. 3 to 5 are held decided in favour of the petitioner.

RELIEF

12. In view of my above discussions, the present claim petition merits dismissal and is accordingly dismissed. Parties are left to bear their own costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 10th day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	:	15/2020
Date of Institution	:	21-1-2020
Date of Decision	:	10-5-2023

Shri Ashwani Dutta s/o Shri Chaman Lal Dutta, r/o V.P.O. Khad, Tehsil & District Una, H.P. . .*Petitioner* .

Versus

The Campus Director, K.C. Group of Institutions, V.P.O. Pandoga, Tehsil & District Una, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. Rajat Chaudhary, Ld. Adv.
For the respondent	:	Sh. Upinder Verma, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

> **"Whether the termination of services of Shri Ashwani Dutta s/o Shri Chaman Lal Dutta, r/o V.P.O. Khad, Tehsil & District Una, H.P. by the Campus Director, K. C. Group of Institutions, V.P.O. Pandoga, Tehsil & District Una, H.P. w.e.f. 06-07-2018, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employer/management?"**

2. The case of the petitioner, in brief, is to the effect that he was engaged by the transport department of respondent on 22.4.2011 without settling terms and conditions and it was agreed that salary of Rs.17000/- shall be paid to him. When the petitioner joining his duties, only a sum of Rs.7000/- was paid. In the year 2013, his services were terminated without following the necessary provisions of the Industrial Disputes Act. The petitioner served a legal notice on 7.9.2013 on the respondent but no action was taken. He moved a complaint before Labour Inspector Una and conciliation proceedings took place and the respondent agreed to re-engage the services of the petitioner on salary of Rs.19000/- per month. The petitioner was reinstated but the agreed salary was not paid to him. He worked in continuity and best to his capabilities with the respondent till 6.7.2018 when his services were again terminated without serving any notice or paying any compensation despite of the fact that he had completed more than 240 working days in each calendar year and especially in the last 12 calendar months preceding his termination. As per the petitioner his services were terminated illegally without following the provisions of the Act and therefore, he is entitled for his reinstatement and other benefits.

3. The respondents have resisted and contested the claim admitting engagement of the petitioner in the year 2011. The Settling the salary to the tune of Rs.17000/- per month is disputed. It is also admitted fact that the services of the petitioner were also terminated in the year 2013 and thereafter he was re-engaged. The respondent has come up with an explanation that work and

conduct of the petitioner was thoroughly questionable and unsatisfactory and he was served show cause notice on 18.6.2018 for his misconduct and when he could not reply the same satisfactorily, his services were terminated. It is submitted that no violation of any of provisions of the Act taken place hence, the petition was liable to be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 02.12.2021:—

1. Whether termination of services of the petitioner by the respondent w.e.f. 06-07-2018 was/is illegal and unjustified, as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, compensation and past service benefits, the petitioner is entitled to from the above employer/respondent? . .*OPP.*

3. Whether the claim petition is not maintainable? . .*OPR.*

4. Whether the petitioner has no cause of action to sue? . .*OPR.*

5. Whether the petitioner has not approached the Court with clean hands and concealed the material facts. If so, its effect? . .*OPR.*

6. Whether the claim of petitioner is time barred? . .*OPR.*

7. Whether the petitioner has no locus standi to sue? . .*OPR.*

Relief

6. I have heard learned Counsels for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	Partly yes
Issue No. 2	:	decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Issue no. 5	:	No
Issue No. 6	:	No
Issue No. 7	:	No
Relief.	:	Petition is **partly allowed** awarding lump sum compensation of Rs.1,00,000/- per operative portion

REASONS FOR FINDINGS

Issues No.1 and 2

8. Both these issues are taken firstly as the respondents have not only raised both these objection seriously, but have also pressed the same with all the seriousness.

9. So far as the termination of the services of the petitioner on 6.7.2018 is concerned, the respondent has admitted this fact but explained that such termination took place for the reason that the petitioner could not explain his misconduct in reply to the show cause notice. The respondent led evidence on this aspect by examining Shri Amit, Manager (HR) as RW1. This witness has sworn his affidavit Ext.RW1/A and tendered on record various documents as RX1 to RX20. When these documents are examined it is clear that there were various complaints against the petitioner and several show cause notices were served upon him and he had even replied those notices. His explanation is also part of these documents. It is also clear from these documents that services of the petitioner were firstly terminated in the year 2013 and later on he was reinstated and his services were again terminated in the year 2018. The affidavit of Shri Amit (RW1) sworn as Ext.RW1/A is very clear and he has referred to various instances when the petitioner was found either drunk on duty or he had misbehaved with Dean of the office and others. Certain instances have been quoted in this affidavit where the petitioner had caused irregularities so far as vehicles in his control were concerned. When he was subjected to cross-examination he stated that brief inquiry was made before the services of the petitioner were terminated. No document showing the domestic inquiry having been conducted against the petitioner for all alleged misconduct has been placed on the record.

10. It is settled law that the services of the daily wager can either be terminated by following the provisions contained in Section 25-F or 25-G of the Act or his services can be terminated, in case, there are serious allegations against him after a domestic inquiry into those allegations has taken place and the allegations have been established. The services of daily wager can not be terminated without holding domestic inquiry in which he has given an opportunity to participate and defend himself. In the case in hand, there were serious allegations against the petitioner regarding misbehave as well as reporting to his duties under the influence of liquor yet no document has been produced to show that any domestic inquiry took place into the allegations of his misconduct and the allegations were established. When no such domestic inquiry had taken place against the petitioner his services could not have been terminated in the manner as has done in this case by simply passing order for his termination. The principle of natural justice are required to be met before taking such a tough decision. The petitioner has denied all these allegations as incorrect even before this court. It is not for this court to adjudge the misconduct of the petitioner and justify the order of the respondent in terminating his services. It is firstly for the respondent to hold domestic inquiry into the allegations and, thereafter, in case the misconduct by the petitioner is proved in the domestic inquiry only then his services can be terminated. Thus the respondent has not followed the principle of natural justice by conducting any domestic inquiry into the allegations and the services of the petitioner have been terminated in a slip-shod manner which is wrong and contrary to the provisions of law. Since the reference made by the appropriate government has sought adjudication by this court on the plea, whether the action of the respondent is against the provisions of the Act or not. Thus this court is more concerned with the provisions contained in section 25 F, G & H of the Act rather than the domestic inquiry which was never held in this case. As aforesaid, the services of the petitioner were terminated without holding the domestic inquiry into the allegation by the respondent, it is but natural that the allegations of misconduct were neither proved nor disproved, and termination of the services without proof of the allegations of the misconduct have to be taken to mean the termination of his services in violation to the provision of section 25 F of the Act, as the petitioner has admittedly, worked for more than 240 days before his

termination in the preceding 12 calendar months. In case, his services were to be terminated the compliance of the aforesaid section was required.

11. It is not the case of the petitioner that any fresh hands has been recruited after him or any junior was retained. Thus violation of section 25 G and 25 H of the Act is not established in this case. The only violation of section 25 F is established. Since no junior to the petitioner is proved to have been working and no fresh hand has bee engaged after his termination, therefore, in case the services of the petitioner are re-engaged, the respondent shall still have the option to terminate his services by complying with the provisions of Section 25-F of the Act. In such a situation the order of re-engagement passed by the court shall become infructuous and therefore, the safe course in these facts and circumstances is to grant compensation in lieu of reinstatement. Taking into account the facts and circumstances of the case and the period for which the petitioner has worked with the respondents, ends of justice shall be met, in case compensation of □1,00,000/- (One lakh only) is awarded in favour of the petitioner, hence both the issues are decided accordingly.

ISSUES No. 3, 4, 5 and 7

12. In view of the aforesaid discussions on the issues no.1 and 2 the petition is maintainable, petitioner has the cause of action and locus standi as well and he has approached the court with clean hands, hence all these issues are decided in negative.

ISSUE No. 6.

13. Since the services of the petitioner has terminated by the respondent in the year 2018 and he has approached the concerned authorities within time hence the petition is not time barred. Otherwise also, the limitation Act does not apply in the reference case as the reference is made by the appropriate Government, and it is for the court to answer the same, hence this issue is also decided in negative.

RELIEF

14. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F of the Act, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of □1,00,000/- (Rupees one lakh only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 10th day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

BEFORE THE NATIONAL LOK ADALAT
HELD AT DHARAMSHALA

[Organized by Labour Court-*cum*-Industrial Tribunal, Dharamshala under section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant	:	Sh. Ravinder Singh Wasan s/o Late Sh. P.S. Wasan, r/o 43, Civil Lines Dharamshala, Tehsil Dharamshala, District Kangra, H.P.
Respondent(s)	:	M/s Jagran Prakashan Ltd. registered Office at Jagran Building 2, Sarvodaya Nagar, Kanpur (UP)-208005.
		Chief General Manager, M/s Jagran Prakashan Ltd., Vill. Banoi, P.O. Rajol, Tehsil Shahpur, District Kangra, H.P.
		General Manager, M/s Jagran Prakashan Ltd., Vill. Banoi, P.O. Rajol, Tehsil Shahpur, District Kangra, H.P.
Number of proceedings of the Labour Court-*cum*-Industrial Tribunal, Dharamshala	:	46/2020
Present:-		
Applicant	:	Sh. Ravinder Singh Wasan in person
Respondent(s)	:	Sh. N.L. Kaundal, Ld. AR Sh. Rajat Chaudhary, Ld. Adv.

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:—

The petitioner Shri Ravinder Singh Wasan is present and he has submitted that the matter stands settled between him and the respondents at his own level and he does not want pursue further with this reference. Since there has been settlement between him and the respondents therefore reference may be dispose of accordingly and he does not want to pursue after with the same.

In view of the statement of the petitioner recorded today the reference is therefore answered in negative holding that the petitioner has himself settled the matter at his own level and he does not claim amount so mentioned in the reference as well as in the claim petition through intervention of the court.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Member
(**B.S. Pathania**)

Judicial Officer
(Hans Raj)

Announced:
Date: 13-05-2023

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref. No. : 213/2015

Date of Institution : 25-05-2015

Date of Decision : 18-05-2023

Shri Naresh Kumar s/o Shri Tulsi Ram, r/o Village Baddu, P.O. Dogri, Tehsil Sunder Nagar, District Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri Sarvjeet Guleria, Ld. Adv.

For the Respondent : Shri Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether time to time termination of the services of Shri Naresh Kumar s/o Shri Tulsi Ram, r/o Village Baddu, P.O. Dogri, Tehsil Sunder Nagar, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during August, 2000 to January, 2010 and finally during February, 2010, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner, in brief, as made out from the claim that he was engaged as daily wage labour on 1.1.2000 by the respondent department and worked till February, 2010 when his services were abruptly terminated without following the process of law. He was given fictional breaks during the aforesaid period in such a manner so that he could not complete 240 working

days in any of the calendar year and his name was not shown in the seniority list as well. Workmen junior to him were retained and regularized with the passage of time, whereas, he was neither re-engaged nor his request for re-engagement was accepted, hence the respondent committed violation of Sections 25-F, 25-G and 25-H of the Act. According to the petitioner, he is still unemployed and he is not working for gains and thus the petitioner has prayed for his reinstatement with all consequential benefits.

3. The respondent has resisted and contested the petition on the ground that the petitioner was initially engaged to carry out the seasonal forestry work in the month of August 2000 and he is worked intermittently till date. However, the services of the petitioner were never terminated by the respondent but he has intermittently worked with the respondent department and came to work at his sweet will. It is further submitted that no artificial breaks were given to him by the respondent department but he has used to come and leave the forestry work at his sweet will. The petitioner has not completed 240 working days in any calendar year and as such the respondent has not violated the provisions of Section 25-F of the Act. Only those workmen have been regularized who had fulfilled the requisite criteria for regularization as per policy of the State Government. Violation of any of the provisions of Sections of the Act has not been committed by the respondent, hence, claim of the petitioner is without any merits.

4. The petitioner has filed rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. From the pleadings of the parties, following issues have been framed for determination on 30.3.2016:—

1. Whether time to time termination of the services of during August, 2000 to January, 2010 by the respondent is illegal and unjustified as alleged? . .*OPP.*

2. Whether final termination of services of the petitioner by the respondent during February, 2010 is illegal and unjustified? . .*OPP.*

3. If issue no.1 & issue no.2 or both are proved in affirmative to what relief petitioner is entitled to? . .*OPP.*

4. Whether the claim petition/reference is not maintainable in the present form as alleged? . .*OPR.*

5. Whether the claim petition has become in-fructuous as alleged. If so, its effect? . .*OPR.*

6. Relief

6. I have heard learned Authorized Representative/counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

Issue No.1	:	Negative
Issue No. 2	:	Negative
Issue No. 3	:	Negative

Issue No. 4	:	No
Issue No. 5	:	No
Relief	**:**	Petition is **dismissed** as per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 2

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The case of the respondent as pleaded and argued is to the effect that petitioner is still working with the respondent and he has worked for 60 days in November and December 2015 and his services were never terminated in the year 2010 as claimed by him, and therefore, the claim and reference both are not maintainable. The learned counsel for the petitioner on the other hand, has argued that, in case, any work was given to the petitioner in the year 2015, it was after the demand notice on which present reference is based, hence the work done in the year 2015 has no casual connection with the present reference. The argument of learned counsel for the respondent has a merit. A careful perusal of the reference shows that demand was raised by the petitioner in the year 2012 and conciliation proceedings have also failed in the matter before March 2012, hence, the matter was submitted to Labour Commissioner vide letter dated 6.3.2012 by the Labour Inspector-cum-Conciliation Officer Sunder Nagar. In this manner, the work done by the petitioner in the year 2015 shall not come in the way of the petitioner's case as the work done in the year 2015 has nothing to do with the present reference which is based on the demand raised in the year 2011-2012 by the petitioner. The argument made on behalf of the respondent is thus rejected.

10. The learned Dy. District Attorney for the respondent has argued that petitioner was engaged on seasonal work particularly in the months of January to March and July to September when there is either the rainy season when new plants are planted or in the winters when the maintenance of the plants is undertaken. According to him, the petitioner was not a daily wager and this fact is clear from the perusal of the mandays chart which shows a specific pattern in which the petitioner has worked. On the other hand, the learned counsel for the petitioner has argued that the petitioner was given fictional breaks intentionally by the respondent so that he could not complete 240 days in any of the calendar year or before his termination, hence it can not be said that the petitioner was a seasonal worker. A Careful perusal of the mandays chart Ext. RW1/B placed on the record shows that petitioner has worked only for 21 days in August, 2000. He has worked in between June to August 2001 for 64 days. In the year 2002 he has worked for 29 days and in the year 2003 for 21 days in the months of January and February respectively. The petitioner has not worked even for a single day in the years 2004 to 2006. The petitioner again worked in July 2007 for 30 days and did not work at all even for a single day in the year 2008. In the year 2009 petitioner worked for 25 days in February and 30 days in August, total 55 days, and in the year 2010 he worked for 14 and 23 days in January and February. The pattern exhibited by the mandays chart shows that petitioner has either worked in the rainy season when plants are planted or in between January to march when maintenance of the plants is undertaken in the forest. Plantation and maintenance are seasonal works and these workmen are not performed throughout the year. Therefore, there is merit in the case of the respondent to the effect that petitioner was performing seasonal works which are not performed throughout the year. The petitioner has although taken up the plea that he was given fictional breaks, whereas, his colleagues were given work for whole year yet he has failed to bring on record any such instance. He has not examined any such workman in the witness box who would depose that since both he and the petitioner have worked on a single muster roll but petitioner was given work for few days only, whereas, he was given the work throughout the year. Neither the family members of the petitioner nor his relatives have appeared in

the witness box to depose about that fact that the colleagues of the petitioner were made to work throughout the year. When such evidence has not been led, the pattern drawn in the mandays chart *prima-facie* shows that petitioner was given seasonal work and not intentional breaks as has been claimed by him.

11. It is clear from the material on the record that the conduct of the petitioner has been such that he himself knew that he was given only seasonal work which was confined only to a particular season and he was not a daily wager like others. The petitioner was given work for 21 days only in August 2000 and in the year 2001 he was given work for 64 days in between July to August. He was given work for 29 days in January 2002. Had the colleagues of the petitioner been given work throughout the year, the petitioner could have agitated the matter in the year 2001 and 2002 itself by raising the demand so that the respondent could stop itself from giving him fictional breaks. The petitioner did not agitate such an alleged unfair practice at all despite of the knowledge that his colleagues were working throughout the year. The petitioner did not work even for a single day in between 2004 to 2006. No fictional break goes so long as to extent it for three years in a stretch, as basic intention of giving fictional breaks is to prevent the workman to work for minimum 240 days in any year so that any right under the Industrial Disputes Act is not accrued in his favour. In case colleagues of the petitioner were given work throughout the years 2004, 2005 and 2006 and no work was given to him, he could not have afforded to sit silent without any protest. It was duty of the petitioner to have raised the demand so that the respondent could be taken to the task by the Labour officer, and in case, the respondent did not stop such a practices, the matter could have been referred to this court for adjudication. He should have realized that his valuable rights were being curtailed. He should have felt aggrieved by such conduct of the respondent. Since the petitioner did not agitate the matter anywhere therefore, the only conclusion that can be safely drawn is that there was understanding between petitioner and the department that he was performing the seasonal works which are limited to particular season and once the seasonal is over the work itself comes to an end. Had there been no such understanding between the petitioner and respondent department, the petitioner would not have sit idle for long three years fully knowing that workmen junior to him are still working and an important right had accrued in their favour, and he was being deprived of the same. In case other workmen were working in continuity since the year 2000, their services would have been regularized in the year 2008. The petitioner again did wake from his slumber and did not agitate the matter. In the year 2007 he has worked only for 30 days in July 2007 and he did not work even for a single day in the year 2008. In the year 2009 the petitioner has worked for 30 and 25 days, in the year 2010 he has worked for 14 and 23 days in January and February. It is in the years 2011-12 that the petitioner had the realization for the first time and then raised the demand upon which the matter was referred to this court for condonation of time to time termination/breaks by the appropriate government. There is no merit in the case of the petitioner for the reasons referred hereinabove. Had he been subjected to time to time termination he would not have waited for as long as 12 years to get the same condoned. He was fully knowing that his colleagues were working in continuity and important and valuable rights have accrued to them. It is clear from the conduct of the petitioner that he was fully aware of the fact that he was performing the seasonal work which was limited only for three months and thereafter no vested right accrued in his favour. The petitioner has though appeared as PW1 in the witness box but his affidavit does not speak anything special which the court could take cognizance of in order to hold that fictional breaks were given to the petitioner as a mean of unfair labour practices. Rather the only inference that can be legitimately drawn from the conduct of the petitioner is that he was himself aware of the fact that he was performing specific seasonal work and was not a daily wager. The respondent, on the other hand, has examined Shri Subhash Chand Prasher as RW1, who is specifically stated that petitioner was performing seasonal works and that too not regularly. He used to volunteered for the work in particular season and remained absent in the next season or seasons.

12. Thus for all these reasons it is held that petitioner was not a daily wage worker as claimed by him and no fictional breaks were given to him. He was rather a seasonal worker and he had worked in a defined pattern in between 2000 to 2010 in two quarters only. When the petitioner is held not as a daily wage worker, the provisions of Sections 25-F, 25-G and 25-H of the Act are not applicable to him and he is not entitled for any relief. It is held that no time to time breaks were given to the petitioner in between 2000 to 2010 and he was not a daily wager. It is further held that he had performed seasonal work which was entirely different from the work of daily wagers. It is further held that the services of the petitioner were never terminated in 2010 as he was performing the seasonal work that ended with the end of the season. Both these issues are held in negative.

ISSUE No. 3

13. In view of the discussions on the issues no.1 and 2, the petitioner is held not entitled to any relief. This issue is held against the petitioner.

ISSUES No. 4 and 5

14. Since the claim has been filed in support of the reference therefore it is maintainable as well as there is no material on the record to hold that the petition has become in-fructuous. It is a different matter that the petitioner has failed stand on the merits of the case, hence both these issues are held in favour of the petitioner.

RELIEF

15. In view of my above discussions, it is held that petitioner has failed to prove fictional breaks were given to him in between 2000 to 2010. It is also not established that his services were terminated in the year 2010 by the respondent. He is thus not held entitled any relief as claimed by him, hence, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 18th day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial ,
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Mandi).

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref No.	:	555/2015
Date of Institution	:	04-12-2015
Date of Decision	:	18-05-2023

Shri Prem Lal s/o Shri Lachhi Ram, r/o Village Kol, P.O. Balag, Sub Tehsil Nihri, Tehsil Sunder Nagar, District Mandi, H.P. . .*Petitioner* .

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . .*Respondent* .

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri Deepak Azad, Ld. Adv

For the Respondent : Shri Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

"Whether the industrial dispute raised by the worker Shri Prem Lal s/o Shri Lachhi Ram, r/o Village Kol, P.O. Balag, Sub-Tehsil Nihri, Tehsil Sunder Nagar, District Mandi, H.P. before the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. *vide* demand notice dated 17-11-2011 regarding his alleged illegal termination of services during October, 2008 suffers from delay and latches? If not, Whether time to time termination of the services of Shri Prem Lal s/o Shri Lachhi Ram, r/o Village Kol, P.O. Balag, Sub-Tehsil Nihri, Tehsil Sunder Nagar, District Mandi, H.P. during year, 1996 to 2007 and finally during October, 2008 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner as made out from the claim petition is that he was engaged in the year 1991 as daily wage in Haraboi Range under Divisional Forest Officer Suket and he worked as such till the year 1996. He was given break in the year 1996 and then re-engaged and he worked till the year 2004. In the year 2004 his services were again terminated and he was engaged after some gap and remained as such till the year 2008. In the year 2008 his services were terminated without any notice and he raised demand in the year 2011 by raising the industrial dispute but the demand was rejected. The petitioner approached the Hon'ble High Court of Himachal Pradesh and it is in this manner that Labour Commissioner was directed to refer the matter to this court for adjudication. As per the petitioner, workmen shown in para no.3 of the claim are junior to him and they were retained and regularized with the passage of the time as is clear from the seniority list but injustice was done to him. In nutshell, the case of the petitioner is to the effect that his services were terminated in the year 2008 without following the process of law, and secondly, he was given fictional breaks in between 1991 to 2008 and workmen junior to him were retained hence, there was violation of Sections 25-F, 25-G and 25-H of the Act as well. On these averments he has prayed for his re-engagement and condonation of the breaks.

3. The respondent has resisted and contested the petition on the plea that petitioner has never worked with the respondent at any point of time. It is also explained that the record upto March 2000 of Suket Forest Sub-Division was gutted in the fire incident in the year 2010 and petitioner has never worked with the respondent, hence, there was no question of termination of his

services as well as retaining the workmen juniors to him. The parallel record is said to have been maintained at Range, Block and Beat level and the presence of the petitioner has not been authenticated at any level, hence, the case of the petitioner is without merits.

4. The petitioner has filed rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. From the pleadings of the parties, following issues have been framed for determination on 30.5.2018:—

1. Whether the industrial dispute raised by petitioner vide demand notice dated 17-11-2011 qua his termination of service during Oct., 2008 by respondent suffers from the vice of delay and laches as alleged? . .*OPP.*

2. Whether termination of the services of petitioner by the respondent during Oct., 2008 is/was illegal and unjustified as alleged? . .*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . .*OPR.*

Relief

6. It is pertinent to mention here that the issues were framed on 30.5.2018 were not framed in accordance with the reference received from the appropriate Government, hence the issues were re-framed / re-casted on 02.5.2023 which reads thus:—

1. Whether the petitioner was given time to time breaks by the respondent as means unfair labour practices as alleged? . .*OPP.*

2. Whether the services of the petitioner were finally terminated by the respondent in the year 2008 as alleged? . .*OPP.*

3. If the issues no.1 and 2 are proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable as alleged? . .*OPR.*

5. Whether the petition is suffers from the vice of delay and laches as alleged? . .*OPR.*

Relief.

7. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record. No evidence was led after the issues were re-framed as no new fact was introduced as the parties have already led evidence on the pleadings made by them.

8. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : No

Issue No. 4 : No

Issue No. 5 : decided accordingly

Relief : Petition is dismissed per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No.1 to 3

9. All these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

10. The petitioner has claimed that he was engaged in the year 1991 and worked till the year 1996 in continuity. He has claimed that a short break was given to him in the year 1996 and thereafter he worked till year 2004 when another short break was given to him, and thereafter, he worked till the year 2008. Such facts are pleaded in para no.1 of the claim petition. The respondent on the other hand, has come up with the specific defence to the effect that petitioner has not worked with the respondent even for a day and the claim petition has been filed on false allegations. The second ground pressed by the respondent is to the effect that the record of the department till the year March 2000 was destroyed in fire incident that took place in the year 2010, but the name of the petitioner does not appear anywhere in the records maintained at Range, Block and Beat level .

11. In case, the plea of the petitioner as taken by him in para no.1 of the claim petition is accepted on its face value even then he had failed to make out his case for the simple reason that if he has worked in continuity in between 1991 to 1996 he must have worked for more than 240 days in each calendar year. In this manner, his name would have appeared in the seniority list of the workers prepared annually in between 1991 to 1996. Such seniority list is available in the office of the respondent and such seniority lists are placed on the files in many similarly situated litigation. Had the petitioner actually worked with the respondent in between 1991 to 1996 for more than 240 days his name would have appeared in the seniority list. Such a seniority list could have been placed on the record. The petitioner has further come up with the case that his services were terminated for a short gap in the year 2004 and thereafter he worked in continuity till the year 2008. In this situation also, his name would have appeared in the seniority lists. He has not placed on record seniority lists of the daily wages nor got the same produced through the officials/officers of the respondent department. When the respondent department has taken up the plea that the petitioner has not worked even for a single day with the department, it is an well understood fact that his name will not appear in any of the seniority list. Even in case, the plea of the respondent to the effect that its record upto the year 2000 was gutted in fire is accepted still the record after the year 2000 was very much available. The petitioner could have called for the record of the respondents office upto the year 2008 as he claims that his services were finally terminated in the year 2008. The record till the year 2008 is very much available and record of eight years commencing from 2001 to 2008 could have been easily produce at the instance of the petitioner to prove that he has worked with the respondent department. No such efforts were made by him to cause such record summoned in support of his case. Infact, Such record would have also not supported his case, as his name is not figuring anywhere in such records as, per the version of the respondent. If the matter is examined from another angle even then the petitioner has failed to stand the test of logic when applied to the factual situation. In case, the petitioner had worked in between 2004 to 2008 for 240 days annually he would have impressed upon the department to include his name in the seniority lists. It is not the case of the petitioner that he was given fictional breaks in such a manner that he could not complete 240 days in any calendar year. Once the petitioner has not taken such a plea, it can be presumed that his name would have been mentioned in the seniority lists, had he infact worked with the respondent. No seniority list has been placed on

the record. It is also not his case that any seniority list is not available with the department. Such seniority list are placed in each and every file dealt by the court and the petitioner could have obtained copy of any such seniority list from the records of the court. In case petitioner was engaged in the year 1991 and, in case, he had worked till the year 2008 for more than 240 days except for two or three breaks, it can not be imagined that no record was maintained by the respondent department regarding the petitioner alone. The petitioner has not alleged any bias on the part of the officers of the department nurtured towards him. He has not explained as to why the department was concealing his record. The workers in the department are not paid by the officers from their own pocket but public funds are used to pay their salary. The entire funds are accounted for in the cash-books. It can not be again imagined that the petitioner was paid money by the department without maintaining the records of the same. The plea of the petitioner appears to be a false on the face of it. The petitioner has stepped into the witness box as PW1 and replicated his sworn affidavit Ext.PW1/A. He was subjected to cross-examination wherein he stated that he did not remember the name of the officer who disbursed the alleged wages to him. It is very strange that this person claimed that he had worked with the department for 16-17 years and he does not remember name of any person who at any point of time disbursed wages to him. Had he actually worked with the department, he would have named the person by whom the salary was disbursed to him. The petitioner has examined one Shri Tilak Ram as PW2 in the witness box who on the date of deposition was 61 years of age and has claimed that he has superannuated as regular beldar from the department in the year 2021. Since this person was superannuated from the department, therefore, he could speak anything and there was no accountability issue for him. He has stated that the petitioner has worked with the department since the year 1991. His affidavit is to the effect that services of the petitioner were terminated, whereas, his juniors were retained. When he was cross-examined he admitted that he has very good relation with the petitioner since his childhood. This witness has not said anything which could be tested by the court to certify the truthfulness of the same. Any person can appear in the court and depose that he had seen any other person working for the department. This much evidence is not enough to prove anything. When the name of the petitioner did not figure in any of the list he would have agitated the matter right from the year 1991 and it is not expected that he remained silent fully knowing that department was not making entries regarding his work anywhere and his juniors were being regularized with the passage of the time. A labourer may be a literate or illiterate person, will not will sit silently when he knows that similarly situated workers have been regularized by the department, whereas, he was being ignored despite of the fact that he has worked for equal number of days with those whose services have been regularized. The petitioner has examined another witness Shri Devi Saran as PW3 who claims that he was working as a peon with the department. He has also sworn his affidavit Ext.PW3/A to support the case of the petitioner. He claims that he had seen the petitioner working of 20 years back. The petitioner claims that his services were terminated in the year 2008 and the statement of this witness was recorded in the year 2021 after about 13 years. This person states that he had seen the petitioner working for the department 20 years back. This statement of this witness on the face of it shows that he has not spoken the truth. He has volunteered to be a witness of the petitioner for sake of brotherhood and to ensure that undue advantage is obtained by the petitioner from the department. This witness categorically stated that record of the employees of forest department are maintained in Range office, Beat office and Divisional level. When the record is maintained at different levels, therefore, the petitioner could have got the record of his colleagues pertaining to the years 2001 onward as the muster Rolls are maintained in the consolidated form and name of the petitioner would have also appeared in any of such muster rolls year 1991. In case his name had not appeared anywhere in any of the muster Rolls, he would have at least summoned those colleagues who had worked with him during the aforesaid period so that they could depose that the petitioner had worked with them at any point of time. The petitioner has not even examined his wife or other family members in the witness box to depose about the facts supporting him. It appears that his wife and other family members have not appeared to depose those facts on oath which they knew as incorrect.

12. Thus for all these reasons it is held that petitioner is not proved to have worked with the respondent department as a daily wage worker at any point of time and his services were not terminated at any point of time as claimed by him. When the petitioner is held not the worker of the respondent department, the provisions of Sections 25-F, 25-G and 25-H of the Act are not applicable to him and he is not entitled for any relief. Both these issues are held in negative.

ISSUE No.3

13. In view of the discussions on the issues no.1 and 2, the petitioner is held not entitled to any relief. This issue is held against the petitioner.

ISSUE No. 4

14. Since the claim has been filed in support of the reference therefore it is maintainable however, it is a different matter that the petitioner has failed stand on the merits of the case, hence this issue is decided accordingly.

ISSUE No. 5

15. So far as the delay and laches are concerned, when the petitioner has failed to prove his case the question of delay and laches become immaterial and this issue is decided accordingly.

RELIEF

16. In view of my above discussions, it is held that petitioner has failed to prove his case in the manner as alleged by him. hence, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 18th day of May, 2023.

Sd/-
(*HANS RAJ),*
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Mandi).

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref No.	:	344/2014
Date of Institution	:	16-12-2014
Date of Decision	:	18-05-2023

Shri Roshan Lal s/o Shri Bal Dass, r/o VPO Hurla, Tehsil & District Kullu, H.P.
. .Petitioner.

Versus

The Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited, Kullu, District Kullu, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri Deepak Azad, Ld. Adv

For the Respondent : Shri R. S. Rana, Ld. Adv

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

"Whether termination of services of Shri Roshan Lal s/o Shri Bal Dass, r/o V.P.O. Hurla, Tehsil & District Kullu, H.P. *w.e.f.* 01-04-2000 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited Kullu, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner as made out from the claim is to the effect that he was engaged as beldar by the respondent *w.e.f.* 27.2.1995 and he worked in continuity till 31-3-2000 when his services were verbally terminated by the respondent. He has approached the Hon'ble Administrative Tribunal by way of Original Application No.2051/2001 and it was decided on 7th March, 2006 and dismissed for want of jurisdiction. Thereafter he approached labour department and raised the demand. The case of the petitioner is further to the effect that he has worked for more than 240 days in the year 1995-1996 and thereafter he was given fictional breaks as a matter of unfair labour practice. Workmen junior to him were retained at the time of his verbal termination and fresh hands were also engaged. The petitioner had approached the respondent time and again for his reinstatement but when nothing was done he raised the demand in which conciliation proceedings took place and failed and the reference was made by the appropriate Government. On these averments the petitioner has prayed for his reinstatement with all the benefits.

3. The respondent has resisted and contested the petition on the plea that the dispute referred was time barred and it can not be entertained. On merits, it is submitted that the petitioner has not worked regularly and continuously in the manner as claimed but he used to report to the duties at his own sweet will. Lastly, he abandoned the work at his own and never completed 240 days in any of the calendar year till March 2000. His services were never retrenched and no junior has was retained and no fresh hand has been engaged. It is submitted that in view of the conduct of the petitioner he is not entitled for any relief.

4. The petitioner has filed rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. From the pleadings of the parties, following issues have been framed for determination on 27-4-2016:—

1. Whether termination of the services of petitioner w.e.f. 01-04.2000 by the respondent is illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what relief petitioner is entitled to? . .*OPP.*

3. Whether the present claim petition/reference is not maintainable in the present form as alleged? . .*OPR.*

4. Whether the petitioner has no cause of action to fiel the present case as alleged? . .*OPR.*

5. Whether the petitioner has estopped to file the present claim as alleged. If so, its effect? . .*OPR.*

6. Whether the claim petition is bad on ground of delay and laches as alleged. If so, its effect? . .*OPR.*

Relief

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:-

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Issue No. 6	:	No
Relief	**:**	Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1, 2 & 4

8. All these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The petitioner has appeared as PW1 in the witness box and tendered his mandays chart Ext.PW1/A. He has stated on oath that his services were terminated without serving any notice upon him and the original application filed by him before Hon'ble Administrative Tribunal was decided in March, 2006 for want of jurisdiction. According to him, the workmen shown by him in para no.4 of the claim are his juniors and therefore, violation of law has taken place. He was cross-examined wherein he denied that no junior has been retained. He also denied that he himself abandoned the job. No other witness was examined by him in support of his case. The mandays

chart of the petitioner is Ext.PW1/A. When this document is clearly gone through it becomes clear that he has worked for 27 days in October, 1998 and thereafter he remained absent and worked in between 16 February to 31 March 2000 for 45 days in continuity. Thus when the working days of the petitioner are counted in reverse order it is clear that he has not worked for 240 days in 12 calendar months preceding his termination, and therefore, violation of Section 25-F of the Act is not established at all as the basic ingredients of Section 25-F are not proved. It may be pointed out here that there is no reference to this court regarding condonation of time to time termination of the petitioner. When such is not the reference, the court can not examine this part of the matter and proceed to hold that fictional breaks were wrongly given to the petitioner and the same were liable to be condoned. It is clear from the mandays chart that the last break continued for more than one years thus there is no continuity in the work of the petitioner and it can not be said that in between 1995 to 2000 the petitioner had worked in continuity. The court at the most can presume that his services were engaged on 16 February 2000 and he worked upto 31 March 2000 for total 35 days the breaks can not be joined together by the court in the absence of any reference from the appropriate Government. The court therefore, at the most can presume that petitioner was lastly engaged on 16 February 2000 and in this manner he loses his seniority as the breaks are not condoned for the reason that there is no such reference. In this background, it is for this court to examine as to whether any junior was retained at the time when services of the petitioner was allegedly terminated in February 2000 or not? The petitioner has although submitted in para no.4 of his claim vaguely that his juniors were retained and fresh hands were also engaged, yet he has not led any specific evidence on this aspect. The petitioner has tendered one seniority list as on 31 March 2000 and one more seniority list as on 1.1.1998. Since the court has treated the joining of the petitioner in February 2000 for the first time as the previous gaps could not be bridged for want of specific reference to this court, the court has to examine the position of those workmen who were engaged after 31.3.2000. Since the seniority list is that of 31.3.2000 therefore, it but natural that no workman was engaged after the petitioner who could be shown in this seniority list. In another seniority list pertaining to the year 1998 the last workman would have been engaged in the year 1998. Thus the petitioner has failed to make out a case that workmen after 16th February, 2000 till 26.2.2000 were retained. The petitioner has not named any such workman who was engaged for the first time on 16.2.2000 and he remained in service after 31.3.2000. Similarly no person who was engaged after 31st March, 2000 has also been mentioned by the petitioner in the pleadings and in the evidence, and therefore, it is not established that any junior was retained at the time of termination of the services of the petitioner and no fresh hand was engaged after this without giving the petitioner priority.

10. So far as the plea of abandonment of job by the petitioner is concerned, the same is not established for the reason that no notice was served upon the petitioner asking him to return to the work as no such document has been placed on the record. The respondent has examined Shri Jitender Kumar Bishat, Senior Executive Engineer as RW1 and he has tendered his affidavit Ext.RW1/A, copy of reference Ext.RW1/C, copy of claim petition Ext.RW1/D and reply Ext.RW1/E. He has also tendered on record mandays chart Ext. RW1/F. These documents are not very relevant for the same. It is made out from these documents that similar reference was received from the appropriate Government at the instance of the petitioner but the petitioner withdrew the claim. Withdrawing the claim does not stop the petitioner for filing new claim in case a reference is made by the appropriate Government. So far as the mandays chart is concerned, it is also the same as produced by the petitioner already. Since the petitioner was not called back to work therefore, plea of abandonment is not established for the reasons that abandonment is the plea of fact and it is for the respondent to establish the same before the court and rely upon the same. Since no junior is proved to have been retained and no fresh hands is proved to have been engaged after the petitioner therefore, the plea of abandonment will not in any manner help the petitioner.

11. In nutshell, the petitioner has failed to make out a case for the violation of the provisions contained in Sections 25-F, 25-G and 25-H of the Act for the simple reason that there

are lots of breaks in between and there is no reference for condonation of the breaks and the last break is for more than one year, therefore, this break is a obstacle in the claim of the petitioner to claim his seniority from the year 1995 when he was engaged for the first time. Had the breaks been given even gap of 12 months to the petitioner, the court could have considered that he has continuously worked every year in between 1995 to 2000 and therefore, his seniority could be considered from year 1995. Since the breaks are exceeding the period of one year therefore, continuity in service is broken and engagement of the petitioner on 16 February 2000 has to be treated as fresh engagement without connecting his past work. The petitioner is therefore, held not entitled for any relief. The petitioner has no cause of action to file the petition hence all these issues are held against the petitioner.

ISSUE No. 3, 5 & 6

12. Since the claim has been filed in support of the reference therefore it is maintainable however, it is a different matter that the petitioner has failed stand on the merits of the case. There is nothing on the record which would act as estoppel against the petitioner to file the claim. So far as the delay and laches are concerned, when the petitioner has failed to prove his case the question of delay and laches become immaterial, hence, all these issues are answered accordingly.

RELIEF

13. In view of my above discussions, it is held that petitioner has failed to prove his case in the manner as alleged by him. hence, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 18th day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Mandi)

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)

Ref. No.	:	686/2016
Date of Institution	:	03-10-2016
Date of Decision	:	18-05-2023

Shri Lakhvinder Singh s/o Shri Prem Singh, r/o Village Sarasawa, P.O. Badriana, Tehsil Palampur, District Kangra, H.P. . .*Petitioner.*

Versus

The Additional SE, HPSEBL Division, Manali, District Kullu, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Bimal Sharma, Ld. Adv.

For the respondent(s) : Sh. R.S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

"Whether alleged termination of services of Shri Lakhvinder Singh s/o Shri Prem Singh, r/o Village Sarasawa, P.O. Badriana, Tehsil Palampur, District Kangra, H.P. during 08/1998 by the Additional SE, HPSEBL Division, Manali, District Kullu, H.P. who had worked on daily wages basis and has raised his industrial dispute more than 16 years *vide* demand notice dated 11-06-2015 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as made out from the claim is that he was engaged as beldar on 21.4.1997 by the respondent and he worked as such till 31.8.1998 when his services were illegally terminated without serving any notice upon him despite of the fact that he has worked for more than 240 days in 12 calendar months preceding his termination. Thus the violation of Section 25-F took place at the end of the respondent. The further case of the petitioner is to the effect that the workmen junior to him were retained by the respondent and violation of Section 25-G was caused. According to the petitioner fresh hands were engaged after his termination and his services were not re-engaged despite of the requests for his re-engagement time and again. On these averments, the petitioner has prayed for his re-engagement with all the consequential benefits.

3. The respondent has resisted and contested the petition and explained that the petitioner was engaged as casual labourer *w.e.f.* 21.4.1998 and has worked as such till August 1998 and that too with lots of breaks. It is denied that the petitioner has worked for minimum 240 days before his alleged termination. The respondent has explained that the petitioner has left the work at his own and his services were never terminated, and therefore, the question of retaining the juniors or engaging fresh hands does not arise , and his claim is without any merits which be dismissed accordingly.

4. The petitioner has filed the rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. From the pleadings of the parties and keeping in mind the language of the reference received, following issues were framed on 30.5.2018 for determination:-

1. Whether termination of services of the claimant/petitioner by the respondent during August, 1998 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition is time barred as alleged? . .*OPR.*

Relief

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	positive
Issue No. 2	:	decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Petition is **partly allowed** awarding lumps sum compensation of a sum of Rs. 50,000/- per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No. 1 to 4

8. All these issues being interlinked and interconnected are taken up together and these issues can be disposed of a single findings.

9. The petitioner has tendered his affidavit Ext.PW1/A in evidence, and the respondent on the other hand, has examined Shri Puran Chand, the present Executive Engineer, HPSEBL Manali as as RW1. The petitioner has not filed on record any mandays chart to show his working days and even the respondent has not placed on the record any such document. In fact no document has been placed on the record by either parties to this litigation and the entire case is based upon the admissions made by the respondent in the pleadings as well as the affidavit sworn in evidence.

The petitioner has pleaded in the very first line of his claim that he was engaged on 21.4.1997 by the respondent and he worked as such till 31.8.1998. In case, these pleadings are taken on its face value, then it can be said that the petitioner has worked for more than 240 days. In such a situation normally the compliance of case of Section 25-F of the Act was required. The respondent, on the other hand, has denied these allegations and pleaded in the reply that petitioner has infact joined on 21.4.1998 and he had worked till August 1998 and that too with lots of breaks. The respondent thus by taking such a plea has taken the onus on itself to prove that the petitioner has worked only for four months. In this manner at least, one fact is admitted from the reply filed by the respondent to the effect that petitioner has worked with the respondent. The question to be

looked into by this court is whether the petitioner has worked for more than 240 days as pleaded by him or he has worked only for four months as pleaded by the respondent. It is settled law that the industrial dispute is a beneficial piece of legislation and it leans in favour of the workman. All the presumptions are liable to drawn in favour of the workman and it is for the employer to rebut the presumptions and lead independent evidence to prove that the plea as taken by the petitioner is wrong on the face of it. In the case in hand, the petitioner has not only pleaded but has also sworn his affidavit to the effect that he was engaged on 21.4.1997 and he worked till 31.8.1998. He was subjected to cross-examination wherein he denied specifically that he was engaged in the year 1998. The statement made by the petitioner on oath is not a bare formality but it has its own evidentiary value. There is sanctity attached to the facts deposed on oath and the court can not disbelieve the same unless the testimony of the witness is shaken through the effective tool of cross-examination by the adversary party. It is for the court to evaluate the statements of witnesses and believe or disbelieve them as per their intrinsic worth. In the case in hand, since the petitioner was not the custodian of the record pertaining to his employment, therefore, it can not be expected that he shall produce the mandays chart before the court. The records are maintained by the employer department and it was for the employer department to have placed on record the mandays chart prepared from the records of the office to show the fact that the petitioner has infact worked for four months only and that too in intervals. No mandays chart has been placed on the record by the respondent which shows that the respondent was not sure about the plea taken by it in the reply. Presumption can be drawn to the effect that the records maintained by the respondents showed that the petitioner has worked for more days than the period pleaded by the respondent in the reply, and in order to conceal this truth from the court, the mandays chart was not placed on record by the respondent. Since the respondent has not placed on record the mandays chart, therefore, the oral evidence in the shape of statement of Shri Puran Chand Thakur, Sr. Executive Engineer, who has sworn his affidavit Ext.RW1/A, can not be relied upon as he has joined the office recently and he has not explained in his affidavit as to from where he had the information regarding the fact the petitioner has worked only for four months. It was mandatory for him to have consulted the records and get the mandays chart prepared according to the records and produce the same before the court so that the petitioner would have receive opportunity to cross-examine him. Since no mandays chart has been placed on record by the respondent despite of the fact that the respondent is custodian of the record, therefore, an adverse inference is drawn against the respondent to the effect that the entries made in the record did not telly with the plea taken in the reply and therefore, the mandays chart was not produced for the inspection of the court. When such is position the statement of the petitioner made on oath can not be disbelieved when he was not shaken in the cross-examination. He has specifically stated about the date of his engagement 21.4.1997. Had the petitioner been cross-examined searchingly on this specific date, things would have become crystal clear. Since no cross-examination was conducted upon the petitioner challenging this fact, therefore the plea can not be disbelieved and the statement of the petitioner made on oath to the effect that he had worked for more than 240 minimum working days with the respondent during the period of twelve calendar months preceding is termination has to be relied upon especially for the reasons that the custodian of the record has intentionally not produced any record before the court. Once it is held that the petitioner is proved to have worked at least for minimum 240 days before his termination during the period of twelve calendar months preceding her termination, therefore violation of the provisions contained in Section 25-F of the Act is established.

10. The respondent has come up with the plea that petitioner has himself left the work and his services were never terminated. It is an admitted fact by the witness Shri Puran Chand Thakur that workmen junior to the petitioner are still working and they have been regularized with the passage of the time. It shows that when the petitioner absented himself from his work, workmen junior to him were already working. Once workmen junior to the petitioner were working, a substantive right had accrued I favour of the petitioner of not being terminated by ignoring his

seniority. The principle of 'first come last go' was applicable in his case. in case he had absented himself, the employer could not have remained silent in this situation. It was the duty of the employer to have summoned the petitioner to report for work and it was also the duty of the employer to apprise the petitioner of the valuable right having accrued in his favour to the effect that, in case, the termination of the services was to take place at any point of time he was not to be terminated before his juniors. It has also been admitted by Shri Puran Chand Thakur (RW1) that neither any notice was served upon the petitioner nor any explanation was called. In view of these admissions, the plea of abandonment is not established. Law is well settled is to the effect that plea of abandonment is purely plea of facts and it is for the employer to establish the same by leading cogent and convincing evidence which has not done by the respondent in this case. Hence the plea of abandonment is not established. When such is the position, the conclusion that can legitimate be drawn is to the effect that the services of the petitioner were terminated after he had worked for minimum 240 days and his juniors were also retained.Thus violation of Section 25-G of the Act is also established.

11. From the material discussed hereinabove, not only the violation of Section 25-F of the Act is established, but the cross-examination conducted upon Shri Puran Chand Thakur (RW1) suggests that the violation of Sections 25-G and 25-H of the Act has equally taken place in the present case. Shri Puran Chand Thakur had specifically admitted that workmen junior to the petitioner were retained and their services have now been regularized. It has also been admitted by him that fresh hands were also engaged after the petitioner. Thus violation of Section 25-H is also established. In case the respondent intended to engage fresh hands priority was liable to be given to the petitioner before fresh hands was given the work. Thus violation of Section 25-H is also established in this case.

12. The reference has specifically been made by the appropriate Government on the question of delay. This court has been called upon to adjudicate the effect of delay of 16 years that has occasion in between the date of termination and the date of demand notice. It was for the petitioner to have explained as to why this delay was caused by not approaching the court. No explanation has come from the petitioner regarding the same. Why he remainedsleeping over his right for long as many as 16 years. He has though tried to justify the delay on the ground that he met the authorities time and again but nothing was done but such explanation is not sufficient for the reasons that when nothing was done by the authorities, the petitioner should have raised the demand and the got the matter settled through judicial intervention. The petitioner slept over his rights for as many as 16 years and thus delay has been fatal in this case. It is settled law that when workman has approached the court after considerable delay and remained sleeping over his rights for long he looses right of reinstatement and the court is not supposed to order his re-engagement. Taking into account the long delay in raising the demand the ends of the justice shall be met and the respondent is directed to pay compensation in lump sum in lieu of reinstatement and other benefits to the tune of Rs.50,000/- (Rupees Fifty Thousand Only). The petition is maintainable for the reason that it has been filed in support of the reference.

RELIEF

13. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-F, 25-G and 25-H of the Act in this case and the petitioner had raised demand after a gap of more than 16 years and his claim for reinstatement has thus been vitiated by delay and latches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of □50,000/- (Rupees Fifty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 18th day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Mandi).

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref No.	:	20/2018
Date of Institution	:	28.03.2018
Date of Decision	:	18.05.2023

Shri Raj Dev s/o Shri Jai Singh, r/o Village Ratkel, P.O. Sajaopiplu, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner* .

Versus

The Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri S. K. Sharma, Ld. Adv.
For the Respondent	:	Shri Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

"Whether termination of the services of Shri Raj Dev s/o Shri Jai Singh, r/o Village Ratkel, P.O. Sajaopiplu, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 28.02.2004 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to from the above employer?"

2. The case of the petitioner as made out from the claim is that he was engaged as daily rated beldar by the respondent in February 1999 and worked as such till June 1999 where after his designation was changed as daily rated blacksmith and he worked as such till 27.2.2004 when his services were terminated illegally without following procedure as provided under the law. Workmen junior to the petitioner named in para no.3 of the claim were retained and his services was retrenched despite of the fact that sufficient work and funds were available with the respondent department. The respondent department retrenched several other workmen in between 1999 to 2005 and the petitioner requested the respondent time and again to re-engage him but he was put off on the pretext that more than 1857 daily wage workers were retrenched and their demands were being considered by the Government. He was assured that his case will be considered in the like manner at the appropriate time. In the year 2005, 1087 more workmen were retrenched by issuing notice under Section 25-N was to them but later on such proceedings were quashed by the Hon'ble High Court and the workmen were re-engaged by the orders of the courts. When the petitioner was not re-engaged he raised demand and appropriate Government refused to make reference to the court, therefore the petitioner approached the Hon'ble High Court by way of writ petition but the writ petition was dismissed an thereafter the petitioner approached the Hon'ble Supreme Court and the Hon'ble Court was pleased and allow the writ and directed appropriate Government to make a reference of the petitioner ignoring the delay. It is submitted that the respondent has violated the mandatory provisions of law while terminating the services of the petitioner, and therefore, petitioner is entitled for reinstatement with all the consequential benefits. It is also pointed out that the delay in approaching the authorities has been considered by the superior courts in many cases and as such delay has been liberally construed in favour of the petitioner.

3. The respondent has resisted and contested the claim and submitted that petitioner has worked intermittently upto February 2004 and his services were retrenched by making compliance of Section 25-F of the Act on completion of codal formalities. Thereafter Dharna was staged by the applicant and other workers and all retrenched workmen were re-engaged including the petitioner. The petitioner is said to have been left the work again at his sweet will and did not report for his duties. It is admitted that the workmen mentioned in para no.3 of the claim are junior to the petitioner but it is clarified that they have worked for more than 240 days in each calendar year, hence their services were regularized in November 2008. It is explained that workmen terminated in between 1999 to 2005 were re-engaged with the intervention of the court. The petitioner is alleged to have approached the court after considerable delay and there was no explanation for the same hence he is not entitled for any relief.

4. The petitioner filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 21.8.2919:—

1. Whether termination of the services of petitioner by the respondent w.e.f. 28-02-2004 is/was illegal and unjustified as alleged? . . *OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the claim petition suffers from delay and laches as alleged? . .*OPR.*

Relief.

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

Issue No. 1	:	Affirmative
Issue No. 2	:	Affirmative
Issue No. 3	:	Negative
Issue No. 4	:	Negative
Relief	**:**	Petition is **partly allowed** per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1, 3 and 4

8. All these issues are interlinked and interconnected and can be disposed of by single finding.

9. The reply to the claim filed by respondent is very material for the adjudication of the claim. In reply to para no.1 (on merits) the respondent has pleaded that petitioner was retrenched under Section 25-F of the Industrial disputes Act after completing all the codal formalities. As per the respondent, the workmen staged a dharna (protest) in which, the petitioner also participated, and later on, the petitioner and other retrenched workmen were re-engaged but the petitioner again left the job at his sweet will. It is submitted that for these reasons, the petitioner was not entitled for any relief. When this para no.2 of the reply is logically considered it is implied therein that petitioner has worked for minimum 240 days in the preceding 12 calendar months before his termination. The reason is simple to reach this conclusion. Since the respondent claims that compliance of Section 25-F was made at the time of termination of the services of the petitioner, therefore, it is well understood that the compliance of Section 25-F of the Act takes place only in a situation where a workman has completed minimum 240 working days in preceding 12 calendar months preceding his termination. Otherwise, there is no requirement of compliance of Section 25-F of the Act. Thus the respondent by taking the aforesaid plea has impliedly established that petitioner has worked for minimum 240 days in preceding 12 calendar months before his services were terminated. It is important to mention here that no mandays chart regarding the petitioner has been placed on the file by the respondent and it is also not the case of the respondent that requirement of Section 25-F was not required. Therefore, in view of the pleaded case of the respondent, this court proceeds further with a strong presumption that petitioner was fulfilling the requisite criteria for the application of Section 25-F of the Act, before his services could be retrenched.

10. The respondent has further pleaded that petitioner was re-engaged after this termination and some other workmen were also re-engaged. The petitioner is said to have left the work again and did not report for the duties thereafter. Thus, the respondent has tried to give a u-turn to the entire story so that the liability could be avoided. The petitioner, on the other hand, has denied all these facts and his case is simple and straight to the effect that his services were terminated only once *i.e.* 28.2.2004.

11. In the aforesaid background the respondent has taken the entire onus upon itself to prove the contents of the reply. In case, the services of the petitioner were terminated after complying with the provisions contained under Section 25-F of the Act, it was easy for the respondent to have placed on record receipts showing the payment of retrenchment compensation received to the petitioner. No such receipts have been placed on the record. In case, the notice under Section 25-F was served upon the petitioner before payment of compensation to him, such notice could have also been placed on the record for the perusal of this court. Neither copy of notice nor receipts regarding payment compensation has been placed on the record. Therefore, the respondent has miserably failed to prove that compliance of Section 25-F took place in the case of the petitioner. Though the respondent has invented a new story in the reply to the effect that dharna (protest) was staged by the petitioner and others and services of all of them were re-engaged yet no document in support of such fact has seen in the light of the day. In case, the services of the petitioner were re-engaged, such re-engagement must have taken place after some documentation in the office. No such document has been placed on the record to show that petitioner was recalled to join his services after his first termination. So much so, the respondent has not even placed on the record the mandays chart of the petitioner so that the court could examine the same and find out that the petitioner has rejoined the work after 28.2.2004 but for few days only, and thereafter he again started absenting himself. Had there been a ring of truth in the plea of the respondent regarding the reinstatement of the petitioner after the protest, the mandays chart should have been placed on the record showing that the petitioner has worked for few days after he was re-engaged. No such mandays chart has been placed on the record probably in order to conceal the truth from the court. Had such mandays chart been placed on the record then this court would have examined the same to find out whether the petitioner has worked after 27.2.2004 or not. Thus the respondent has come up with a plea which is false on the face of it and there is not even an iota of material on the record to infer that the services of the petitioner were terminated lawfully after complying with the provisions of Section 25-F of the Act, and thereafter his services were re-engaged, but he left the work at his own after his re-engagement. Rather, the case of the petitioner has been specific to the effect that he has worked till 27.2.2004 and thereafter his services were terminated orally by the respondent and his services were never re-engaged. As aforesaid, once the respondent has taken the plea of the fact that a notice under Section 25-F was served upon the petitioner, therefore the logical conclusion this court can safely draw is that the petitioner has worked for at-least 240 days in the preceding 12 calendar months before his termination. Since the respondent has not placed on the records any mandays chart of the petitioner therefore, this court also draws an adverse inference against the respondent for withholding material documents. Thus it is held without any hesitation that the services of the petitioner were terminated without complying with the provisions contained in Section 25-F of the Act w.e.f. 28.2.2004.

12. The petitioner has further come up with the plea that the respondent has violated the mandatory provisions of the Industrial Disputes Act contained in Sections 25-G and 25-H as the workmen junior to him were retained and his services were terminated. According to the petitioner fresh hands were re-engaged after his termination without giving him an opportunity and priority for re-employment. The petitioner has led evidence to this effect by swearing a detailed affidavit Ext. PW1/A. He has placed on record copy of demand notice Ext. PW1/B. He was cross-examined but nothing fruitful could be extracted. He specifically denied that his services were re-engaged after the year 2004 but he did not join. The respondent has examined Engineer Shri Anil Kumar Sharma as RW1 and his affidavit is Ext.RW1/A. He has tried to justify the case as pleaded in the reply but has failed miserably. When he was subjected to cross-examination he tried to make out a case that petitioner has left the work at his own but this fact has not been established at all for the reasons already discussed hereinabove. He although denied that junior to the petitioner were retained but when list Ext.RW1/B shown to him, he denied that the workmen shown in the same were junior to the petitioner. He admitted that they have now been regularized with the passage of time. Another seniority list Ext. PA was shown to him and he admitted that 47 workmen were re-

engaged after orders of the court. He admitted that after the year 2000 fresh hands were also engaged. Ext.RW1/B is list of the workers and most of the workmen mention in the same are junior to the petitioner. It is therefore, proved from the aforesaid material that workmen junior to the petitioner were retained whereas, the services of the petitioner were terminated in the year 2004 and thus violation of Section 25-G was not made.

13. The petitioner has further alleged that fresh hands were also engaged after her termination. This specific question was put to RW1 Shri Anil Kumar Sharma and seniority list Ext. PA was shown to him and he was admitted that fresh hands were engaged in the year 2000 and thereafter also. In this situation also once the services of the petitioner were terminated in the year 2004, he was entitled for priority over the fresh hands whenever new workmen were engaged by the respondent. This witness has not stated that no fresh hand was engaged after the year 2004. It is therefore, held that the respondent has not only violated the provisions contained in Section 25-G of the Act but he had also violated the provisions of Section 25-H of the Act.

14. Thus from the aforesaid material it is established that the services of the petitioner were terminated in the year 2004 and the violation to the provisions contained in Sections 25-G and 25-H of the Act was caused by the respondent when juniors were retained and fresh hands were engaged without giving preference, priority and opportunity to the petitioner. In view of the above it is held that the respondent has violated the provisions of Sections 25-F, 25-G and 25-H of the Act and the petitioner is held entitled for reinstatement

15. Learned Deputy District Attorney for the respondent has argued that there is a delay in raising the demand and petitioner is not entitled for the relief of reinstatement. On the other hand, the learned Counsel for the petitioner has argued that question of delay was not referred to this court by the appropriate government for adjudication, and therefore, the court can not consider the question of delay to defeat the valuable rights of the petitioner. The learned Counsel for the petitioner has cited a ruling of Hon'ble High Court of Himachal Pradesh in case titled as **State of H.P & Anr. Vs. Mahinder Singh reported in 2017 LLR 1256** in support of his contention. In the judgment cited by the learned counsel for the petitioner, the labour court had directed the reinstatement of the petitioner without examining the question of delay and laches **T**he State Government of H.P assailed the Award of the Labour court by way of writ petition on the plea that the Labour Court should have dismissed the claim petition on the ground of delay and laches as the workman had raised the dispute after a considerable time. Relying upon **Mukand Ltd. v. Mukand Staff & Officers association reported in 2004(101) FLR 219 (SC)**, it was held that the Tribunal being the creature of the Reference, can not adjudicate the matters not within the purview of the dispute actually referred to it by the order of Reference. It was further held that since the question of delay and laches was not referred to the Tribunal, therefore, the Tribunal could not have answered the Reference against the workman on the ground of delay and laches, and has thus rightly granted the relief. In the case in hand also, a careful perusal of the reference received by this court for adjudication shows that the question of delay and laches has not been referred to this court for adjudication. Thus this law is fully applicable to the facts and circumstances of this case. When the contents of the reference are carefully examined, it is clear that the Hon'ble Apex Court has directed that the objection of delay be ignored for the purpose of making the reference to the court. This observation of the Hon'ble court has been not properly understood while making the reference. The intention of the Hon'ble court while making these observation was that the appropriate government should not foreclose the valuable rights of the petitioner without referring the question of delay and laches for adjudication to the court where the petitioner could always explain the same while leading the evidence and the respondent would get the opportunity to meet this plea. It was thus the labour court and not the appropriate government to decide whether the delay in approaching the authorities on the part of the petitioner was bonafide and properly explained or not. The observations made by the Hon'ble Supreme Court only meant that the

reference be made to the court along-with the question of the delay and its impact on the case of the petitioner, so that the court could render a specific finding on the same after examining the material so placed before the court during the proceedings and where both the parties would get a chance to challenge the evidence of each other by the effective tool of cross-examination. These observations were not properly understood while making the reference and the question of delay was not referred at all to this court for adjudication. When such a question was not referred, this court can not examined the same and the court has to proceed on the assumption that the respondent has waived off the objection of the delay.

16. Thus it can not be said that the case of the petitioner suffers from the delay and laches. The petition is maintainable. Issue no.1 is held in affirmative and issues no. 3 and 4 are decided in negative.

ISSUE No.2

17. Once it is proved that the respondent has violated the provisions contained in Sections 25-F, 25-G and 25-H of the Act, the petitioner is held entitled for the relief of reinstatement when the issue of delay and laches has not been referred to this court for adjudication and moreover delay of about six years as the layman worker can not be said to be on very higher side so as to deny the relief as claimed by him. Moreover, it is an admitted the fact that other similar situated junior workers were also re-engaged by the orders of the courts. The petitioner is also held entitled for the same treatment and he is held entitled to the relief of reinstatement. So far continuity and seniority is concerned, petitioner is held entitled for seniority and continuity for this reason that his services were illegally terminated there was no fault on his part. So far back wages are concerned, the petitioner is held entitled to receive a lump sum amount of Rs.50,000/-towards his back wages as is token of past wages which would also be paid by the respondent to the petitioner. Hence, this issue is decided accordingly.

RELIEF

18. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. The petitioner is entitled for seniority and continuity in service from the date of his termination. However, the petitioner is also held entitled for Rs.50,000/- (Rupees Fifty Thousand Only) as token money as back wages, which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 18th day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Mandi).

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref. No. : 62/2020

Date of Institution : 08-9-2020

Date of Decision : 18-05-2023

Smt. Bantu Devi w/o Shri Surender Singh, r/o Village Narhan (Tiper Thach), P.O. Tandi, Tehsil Banjar, District Kullu, H.P. . .*Petitioner* .

Versus

1. The Managing Director, The Kangra Central Co-operative Bank Limited, Head Office at Dharamshala, District Kangra, H.P.

2. The Assistant General Manager, The Kangra Central Co-operative Bank Limited, Zonal Office Banjar, District Kullu, H.P. . .*Respondents*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri R. K. Khidtta, Ld. Adv.

For the Respondent(s) : Smt. Neel Pathak, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

> **"Whether the termination of services of Smt. Bantu Devi w/o Shri Surender Singh, r/o Village Narhan (Tiper Thach), P.O. Tandi, Tehsil Banjar, District Kullu, H.P. by the (1) The Managing Director, The Kangra Central Co-operative Bank Limited, Head Office at Dharamshala, District Kangra, H.P. (2) The Assistant General Manager, The Kangra Central Co-operative Bank Limited, Zonal Office Banjar, District Kullu, H.P. w.e.f. 01.04.2018 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employers?"**

2. The case of the petitioner as made out from the claim is to the effect that she was engaged as water carrier-cum-sweeper on 18.6.2016 by respondent no.2 and she joined in Zonal Office Banjar where she worked till 31.3.2018 continuously. Her services were verbally terminated by the respondent no. 2 w.e.f. 1.4.2018. She is although shown to have been engaged on outsource basis but she was infact engaged on daily wage basis and her presence was marked and verified by respondent no.2. Her leave was also sanctioned and salary was paid to her. The respondents have not placed on record any contract with outsource agency to show that the petitioner was an outsource employee. Since the petitioner has worked for more than 240 days in each calendar year and in twelve calendar months preceding her termination, therefore, her services could not have

been terminated orally by the bank and the respondents have thus violated the provisions contained in Section 25-F of the Act. The petitioner approached the Hon'ble High Court of Himachal Pradesh by way of Writ Petition no. 1221/2018 and it was disposed of by the Hon'ble Court with the observations that she had alternative remedy available under the law. She therefore, raised the demand and the conciliation proceedings took place but failed. It is further case of the petitioner that the respondents have engaged one Shri Vijay Mehta after illegally terminated her services. She even appeared in the interview conducted by the bank, however, she was not selected but Shri Vijay Mehta was selected and appointed despite of the fact that he did not fulfill the requisite criteria meant for the post as his house was more than eight kilometers away from the office. He obtained a false certificate from Gram Panchayat Pradhan showing the distance between his house and zonal office as three kilometers. This Vijay Mehta had not even moved an application for being engaged as part time water carrier and his appointment is against the rules. The petitioner has also submitted that the process of appointment was also not fair as no marks were given to the petitioner for the experience she had despite of the fact that it was also one of the criteria. The representation made by the petitioner to the Director of the Bank was also rejected and she was compelled to raise issue before the Appropriate Government. It is submitted that she has no source of income and she was not gainfully employed anywhere. There has been violation of the provisions of The Contract Labour (Regulation and Abolition) Act 1970 while her engagement took place. With the aforesaid background, the petitioner has claimed her reinstatement with continuity, seniority and full back wages and other service benefits. She has also prayed for litigation costs of Rs.30,000/-.

3. The respondent has resisted and contested the petition on the plea of maintainability and the fact that she has not approached the court with clean hands. It is clarified that she was engaged only for four hours as water carrier-cum-sweeper and this fact has been admitted by her in the application moved to the bank on 6.9.2017. It is also denied that she was engaged by the Assistant General Manager on daily wage basis. It is emphasized that she use to perform her duties for four hours and she was paid Rs.25/- per hour, hence she was not a daily wage nor workman for the purpose of the Act. She has not worked for 240 days in any calendar year as claimed by her. Her services were of temporary in nature and she was paid through bills by the bank and later on the post was advertised and Shri Vijay Mehta was engaged after following of the procedure and rules. It is submitted that petitioner has no case for intervention by the court hence, the petition be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and other material especially the reference received by this court, following issues were framed for determination on 11.01.2023:—

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 1.4.2018 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the court with clean hands and suppressed the true facts from the court, as alleged? . .*OPR.*

Relief

6. I have heard learned Counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	Yes
Issue No. 2	:	decided accordingly
Issue No.3	:	No
Issue No. 4	:	No
Relief	:	Petition is **allowed** per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No. 1 to 4

8. All these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The learned counsel for the respondent has argued that the petitioner was engaged only for four hours a day and daily wages were not paid to her, hence, she was not governed by the provisions contained in section 25 F of the Act, therefore, her petition is not maintainable. On the other hand, the learned Counsel for the petitioner has argued that the petitioner is proved to have been engaged by the respondents on daily wage basis and work was taken from her for the whole day, hence, she is a workman for the purpose of this Act, and the petition is very much maintainable.

10. When the material on the record is subjected to careful examination, it is clear from the pleadings itself that the petitioner was a part time worker and she use to work for four hours a day and was paid on hour basis. Such pleading have been made by the respondent. The petitioner has although claimed her status as a daily wage worker, yet she has placed on the record her own representation made to the authorities, wherein she has claimed herself as a part time water carrier-cum-sweeper. This representation has been tendered by the petitioner herself as Ext. PW2/E. The petitioner can not wriggle out of the averments made by her in this representation. She has also not explained the contents of this representation in her pleadings. Admission of a fact is the best evidence that can be relied against the person making the same. Apart from this representation, the petitioner has relied upon various bills against which the payment was made to the her by the respondents as Ext. PW1/A1 to PW1/A20. Details of the amount paid to the petitioner has been appended to every bill and it is clear from those details that the petitioner was paid on hourly basis and not on daily basis. These documents also prove that the petitioner was working on part time basis and not on daily wage basis. The petitioner has come up with a false excuse during her cross-examination to the effect that she was paid through bills for the work for the rest of the day. It appears that she intended to convey that she was paid twice by the bank. Firstly, for the work done for four hours a day and thereafter, for the work done by her for the rest of the day. No such evidence has been led by her. Thus it is proved from the contents of the representation of the petitioner and the other evidence that she was not a daily wage worker but her services were engaged as part time water carrier-cum-sweeper by the respondents.

11. The next question that arises for determination is as to whether a part time worker is entitled for the benefit of section 25 F of the Act or not? This question was dealt with by the Hon'ble Supreme court of India in **Divisional Manager New India Assurance vs A. Sankaralingam reported in AIR 2009 SC 309**. This judgment was followed by the Hon'ble High Court of H.P. in **Block Development Officer, Pragpur, Tehsil Dehra, District Kangra, H.P. Vs. Raj Kumar s/o Amar Nath reported in 2012 Law Suit(HP) 1011.** It has been categorically held that a part time workman would be covered within the definition in section 2(s) of the Act and he would be entitled of the benefit of continuous services under section 25 B and the benefit of section 25 F of the Act. Relying upon the aforesaid law, it is held that the petitioner was engaged as a part time water carrier-cum-sweeper by the respondents and her services were covered under the definition of the workman, and section 25 F is fully applicable in her case.

12. The next question that arises for consideration is whether the petitioner has been able to prove that the respondents have violated the provision contained in section 25 F of the Act or not? The learned Counsel for the respondents has argued that since the petitioner was engaged temporarily in accordance with the intentions of the Circular dated 09.02.2015 tendered on the record as Ext. RW1/G and another circular dated 08.06.2015, (Ext. RW1/H), therefore, she can not claim the benefit of section 25 F of the Act, being an outsource worker and her services could be terminated at any time without any notice. She has referred to contents of para no. 3 of the reply filed on behalf of the respondents. The learned Counsel for the petitioner, on the other hand, has argued that no material has been placed on the record by the respondents to prove their plea, hence, this plea is liable to be rejected straightway.

13. When the material on the record is subjected to careful examination, it becomes clear from the Circular dated 09.02.2015, (Ext. RW1/G) that it was decided by the management of the bank that in future the bank will desist from appointing any part-time worker, and whenever the need arises, the job will be outsourced locally or to some agency on mutually agreed terms. Only in those circumstances where the bank fails to have any post filled up through outsourcing, the bank will appoint any PTW after seeking special permission of the Registrar Cooperative Societies, H.P. It was further mentioned in the letter that the appointment shall be made as per the Government policy by notifying the vacancy, calling for the application amongst those who are resident of the radius of 8 kms and by a selection committee.

14. Thus there are two options to fill up this post. Firstly, it is to be filled up on outsource basis, and secondly, in case, the bank fails to do so then it will be filled up through public employment after following the policies of the government regarding the recruitment mentioned hereinabove. The first option is thus mandatory and the second is conditional on the event of the failure of the bank in not engaging the candidate by way of first option. The respondents in the present case also started with the option no. 1 and engaged the petitioner. The respondents, however did not engage her as per the conditions mentioned in this letter. The petitioner was not requisitioned from any outsourcing agency after entering in a contract with such an agency. There are neither pleadings nor evidence on the record to the effect that the petitioner was infact engaged through a particular outsourcing agency after entering in a contract with any such agency. It is not the case of the respondent that the payment of the wages so fixed was also made to the contractor and not to the petitioner directly. The respondents have rather placed on the record various bills vide which the payment was made to the petitioner directly by the bank and such documents have already been discussed hereinabove. Thus the outsourcing agency was not involved by the respondents at all. Hence, it can not be said at all that the petitioner is worker of the outsource agency and not of the bank.

15. It is clear from the perusal of the circular Ext. RW/1/G that the services of such water carrier-cum-sweeper could also be outsourced locally. It is not clear as to what this terms actually

means. It appears that the intentions to introduce these words in this circular were to permit the bank to engage such a water carrier-cum-sweeper at the local level at the own discretion of the Manager of the local branch without involving any outsource agency in between. If this mode was to be adopted then terms of such an engagement were supposed to be mutually agreed. It means that in case, the local outsource was to take place then an agreement was supposed to be entered in between the candidate and Bank regarding the terms and conditions of the employment. Such terms and conditions were to be accepted by both the parties so that they remain bound by the same and the employment of such an employee could be regulated as per those terms. The petitioner was neither outsourced from the outsource agency nor any terms and conditions were settled with her after engaging her locally. It is neither the pleaded nor proved case of the respondents that the petitioner has mutually agreed to certain terms and conditions with the respondent and she was bound by the same. The petitioner was engaged without settling such terms and conditions at the local level and she worked as such till the date when her services were terminated all of sudden on 31.03.2018 without assigning any reasons. In the aforesaid background, the pleading and evidence led by the respondents to the effect that the services of the petitioner could be terminated at anytime without serving any notice upon her, can not be considered favorably for the simple reasons that no such terms and conditions were settled with her nor she has accepted the same. Otherwise also, the employer can not impose unreasonable conditions upon the workman which are against the provision of the Industrial Disputes Act and thereby make any provision of the Act redundant and inapplicable. There can not be any agreement or contract which would nullify the provisions of any statute. The policy of hire and fire is not backed by any statute and once a workman is engaged, the provisions of the Industrial Dispute Act are fully applicable when the employer is covered under the definition of industrial establishment. In the case in hand, the respondents has not raised any objection to the effect that it was not covered in the definition of industry for the purpose of the applicability of the Act.

16. There is no reason whatsoever on the record brought by the respondent to explain as to why the services of the petitioner were terminated in a hire and fire manner. There are no allegations of misconduct on her part. It is also not the case of the respondent that the work she was performing was no more available in the branch of the bank where she was engaged. It is also not the case of the respondent that the branch where she was engaged had ceased to function or the contract entered between the respondents and the petitioner had come to an end and no fresh contract was entered with her, hence, her services were not availed any further. There are no guidelines in the circular Ext. RW1/G which could be followed when the services of any such worker were to be dispensed with. In fact, the Circular mentioned above emphasized on contractual engagement of water carrier-cum-sweeper so that his services could be done away at the end of the contract and such a person does not become a permanent liability on the bank. In case, the bank failed in doing so only then the engagement could take place by following the second mode mentioned in the letter. The respondents in the present case engaged the services of the petitioner without following the terms and conditions of the letter, and in the absence of any contract having been entered with the petitioner her services could not have been dispensed with abruptly as has been done in the present case.

17. As aforesaid, the petitioner is covered in the definition of workman for the purpose of this Act in view of the settled law referred hereinabove. She has admittedly worked for more than 240 days in the period of twelve calendar months preceding her termination. When such is the position, her services could not have been dispensed with without following the provisions of section 25 F of the Act. Admittedly, neither any notice was served upon her nor any compensation in lieu of retrenchment was paid to her by the respondent while terminating her services. Neither the branch of the bank where the petitioner was engaged has ceased to function nor the work of the water carrier-cum-sweeper has to come to an end in the branch. Thus there has been violation of the provision of section 25 F of the Act in this case.

18. After the services of the petitioner were terminated without following the provisions of the Act by the respondent no. 1, the respondents proceeded to engage a fresh hand in the place of the petitioner and followed the second mode as suggested in the Circular Ext. RW1/G. The notice of the vacancy was displayed, application from the desirous candidates were called for and a selection committee was formed. A criteria was fixed and as many as 30 candidates appeared before the Selection Committee. The respondents have tendered on the record the notice displayed to call for the applications from the desirous candidates as Ext. RW1/B. The petitioner also applied for the post vide her application Ext. RA. Sh. Vijay Mehta also applied for the post vide his application Ext. RW1/C. The committee vide its proceedings Ext. RW1/D to RW1/F, declared Sh. Vijay Mehta as selected candidate, who was ultimately offered the post and he is presently working as water carrier-cum-sweeper in the concerned branch.

19. In the aforesaid background, the learned counsel for the respondents has argued that since Sh. Vijay Mehta is not party before this court nor he was associated in the conciliation proceedings and nor there is any reference to adjudicate his case, therefore, the claim is liable to be dismissed in his absence before the court as he is necessary party to the present reference. She has further argued that since the petitioner has herself appeared in the interview before the selection committee after having applied for the post after the same was advertised, she has no locus standi to contend that the selection of Sh. Vijay Mehta was illegal. It is submitted by her that in view of this, there is no violation of section 25 H of the Act. The learned Counsel for the petitioner, on the other hand, has argued that engaging a fresh hand in the place of wrongfully terminated worker without giving priority to such a worker is sheer violation of section 25 H of the Act, hence, the petitioner is entitled to the relief claimed.

20. It is true that Sh. Vijay Mehta is not party in the present reference. He has also not participated in the conciliation proceeding and there is also no reference to adjudge his position *vis-a-vis* the claim of the petitioner. The question that needs answer is whether he is a necessary party to adjudicate the plea of section 25 H of the Act raised by the petitioner in this case. The answer to this question in my humble opinion is in negative. The plea of section 25 H can be raised by a workman against its employer, and this plea has nothing to do with the person who was engaged as a fresh hand. Section 25 H is worded in such a manner that it does not suggest any course of action to deal with the fresh hand so engaged. No consequences have been provided in the section with respect to the freshly engaged workman. Freshly engaged workman does not come within the preview of the adjudication whenever the question of violation of section 25 H is under consideration. The only relief that the court can grant is the reinstatement of the workman at whose instance the reference has been made or any other alternate relief. The court can not order the termination of the services of the freshly engaged workman. It is for the respondents to decide as to whether the services of the workman junior to the petitioner are to be retained, or terminated by invoking the provision contained in section 25 F of the Act by applying the principle of 'last come first go' in case, the services of such a workman are found in surplus. The employer is always at liberty to deal with such a fresh hand in any other manner that suites to the employer. The court does not enter into this controversy at all. The court is primarily concerned with the relief to be granted to the workman at the instance of whom the reference was received by the court. Thus Sh. Vijay Mehta is not a necessary party for the adjudication of this reference. Moreover, the reference has not sought adjudication of the status of this Vijay Mehta. The only question posed before this court is about the illegal termination of the petitioner and the relief she is found entitled to. In case, the respondents were aggrieved by the terms of the reference, they could have assailed the same by way of writ petition and got the same rectified.

21. It is very much clear from the material on the record that the respondents have not settled the terms and conditions with the petitioner at the time of engaging her. Thus her services could not have been disengaged without complying the provisions of section 25 F of the Act, for

the reasons already explained hereinabove. Since the post was still existing, the respondents were duty bound to give priority and opportunity to the petitioner to come back and join her duties whenever the need to fill the post had arisen. No such opportunity was granted to the petitioner, but the post was advertised and petitioner was declared to have qualified in the second position, and the post was given to the person who had got the highest marks. By advertising the post, the respondents did not follow the principle given in section 25 H of the Act, which was mandatory. Once the violation of section 25 F has been established, the provision contained in section 25 H has to be followed whenever the need arises to fill the post. By following a different mode, the respondents violated their own circular Ext. RW1/G as once engagement was done by adopting the first mode, the question of adopting the second mode did not arise at all. Infact the engagement of the petitioner was not done strictly in accordance with the intentions of the Circular Ext. RW1/G as her services were neither engaged through any outsourcing agency nor terms and conditions were settled with her mutually after locally outsourcing her services. By such omissions on the part of the employer the petitioner gained the status of the workman of the respondents. The position was strengthened further when her working days exceeded 240 in the period of twelve calendar months and she became entitled to the benefit of section 25 F in the absence of any contract for a specified period.

22. The learned Counsel for the respondent has also argued that the petitioner has since applied for the post advertised by the respondent and and since she has appeared before the Selection Committee, she can not now contend that she has a better right to hold the post over a person who has been selected by the interview committee. It may be stated here that this court is not supposed to deal with the question regarding the manner the fresh hand has been engaged by the bank. Since the question posed in the reference is limited to the extent to examine the legality of the manner in which the services of the petitioner were dispensed with, the court can not enter in the secondary dispute. The court has to confine itself to the question as to whether the petitioner is proved to be a workman as defined in the Industrial Disputes Act or not? Secondly, in case, she is proved to be a workman, whether her services are proved to have been terminated without following the provisions contained in section 25 F of the Act or Not? The court has to examine the next question to the effect whether the petitioner was given opportunity to return to her work when the post was again filled up, and lastly , in case the petitioner is entitled to any relief, then what is the relief that can be granted to him? All other questions are secondary for the present reference and can not be given any priority. Thus even if the petitioner has appeared in the interview for the same post after her termination, even then she is not estopped from invoking the provisions of the Industrial Disputes Act.

23. The next question that arises for consideration is as to what relief the petitioner is entitled to in these facts and circumstances? It is settled law that in case there is violation of section 25 F of the Act alone, the employer can be directed to pay the compensation to the workman instead of the reinstatement as the employer after reinstatement of the worker can invoke the provisions of section 25 F and terminated his services again after paying him the compensation as per law. It is also settled that whenever there is violation of section 25 G or 25 H accompany the violation of section 25 F, then the rule is reinstatement and compensation is the exception by taking into account the facts and circumstances of each case. In the case in hand, the services of the petitioner were terminated in March 2018 and she has raised the dispute at earliest by making the demand. Thus the petitioner has not slept over her own rights and has remained vigilant throughout. Taking into account this fact, the petitioner is entitled to the relief of reinstatement in services. Since her service were terminated in violation to the provisions of the Act, therefore, she is also entitled to seniority and continuity in services as she was always willing to work but she was prevented from her work by the action of the respondents. So far as the back wages are concerned, it may be stated that the petitioner has specifically pleaded that during the period of termination she was not gainfully employed and had no source of income. She has also sworn her affidavit to this

effect in evidence. She was subjected to cross-examination but this aspect of the matter was not touched. No evidence was led by the respondents on this point to prove that the petitioner was gainfully employed during this period. In this situation, the statement of the petitioner can not be disbelieved and it is proved that she was not gainfully employed during the period her services remained terminated. It is settled law that when it is proved that the services of a workman were terminated wrongfully by the employer, the workman can not be deprived of his back wages by the court as such a practice would amount to encourage the errant employer and discourage the workman. Reference may be made to the law laid down by the Hon'ble Supreme Court of India in **(2013) 10 SCC 324** titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Ors.** Taking support from the aforesaid law, the petitioner is held entitled for back-wages on such rates and manner she would have received in case her services were never terminated. In other words, she shall be presumed in services w.e.f from the date of her termination till the date of order and her wages shall be calculated accordingly on hourly basis as she was getting before. It may be stated here that the petitioner had examined Shri Ram Krishan, Assistant General Manager as PW1 who had tendered the bills pertaining to the petitioner as already discussed. When he was cross-examined he has was completely shattered and deposed that Shri Vijay Mehta was appointed against the post lying vacant earlier and petitioner was engaged on outsource basis. For the reason already discussed hereinabove, it is held that the petitioner was not engaged on outsource basis as has been claimed in the petition but she was engaged without involving any contractor. So far as the issue regarding maintainability of the claim petition is concerned, claim is fully maintainable for the reason already discussed hereinabove and petitioner has not concealed anything which she was supposed to disclose. She has disclosed all the facts in her pleadings and evidence and therefore, the relief to which she is entitled to can not be frustrated for any reasons.

24. In view of the aforesaid discussion it is held that the services of the petitioner were terminated illegally by the respondents w.e.f. 1.4.2018 and she is therefore, entitled for her reinstatement as there is violation of Sections 25-F and 25-H of the Act. She is also entitled for full back wages to be calculated in the same manner as if she was in service throughout and had never remained off duty on account of termination. It is held that petitioner has come to the court with clean hands, hence issues no.1 and 2 are held in favour of the petitioner and accordingly, and issues no. 3 & 4 are against the respondents.

RELIEF

25. In view of my above discussions, the claim petition succeeds and is allowed. The respondents are directed to reinstate the services of the petitioner forthwith continuity and seniority. She is held entitled to back wages to be calculated in the same manner as if she was never terminated. Parties are left to bear their costs.

26. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 18th day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Mandi)

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT CHAMBA)

Ref. No. : 13/2014

Date of Institution : 09-01-2014

Date of Decision : 26-05-2022

Smt. Kamla Devi w/o Shri Gajan Singh, r/o Village Cheema, P.O. Saru, Tehsil & District Chamba, H.P. . .*Petitioner.*

Versus

1. The Registrar, H.P. University of Horticulture & Forestry, Nauni, District Solan, H.P.

2. Senior Programmer Co-ordinator, Dr. Y.S. Parmar, University of Horticulture & Forestry, Krishi Vigyan Kendra Chamba at Saru, District Chamba, H.P. . .*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri T.R. Bhardwaj, Ld. AR
Shri I.S. Jaryal, Ld. AR

For the Respondent(s) : Shri Munish Kumar, Ld. Adv.

And

Ref No. : 583/2015

Date of Institution : 30-11-2015

Date of Decision : 26-05-2022

Smt. Kamla Devi w/o Shri Gajan Singh, r/o Village Cheema, P.O. Saru, Tehsil & District Chamba, H.P. . .*Petitioner.*

Versus

1. The Registrar, H.P. University of Horticulture & Forestry, Nauni, District Solan, H.P. . .*Respondent.*

Reference/Direct Claim Petition under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri T.R. Bhardwaj, Ld. AR
Shri I.S. Jaryal, Ld. AR

For the Respondent(s) : Shri Munish Kumar, Ld. Adv.

AWARD

The following reference registered as Reference No. 13 of 2014 was received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

1. **"Whether time to time termination of the services of Smt. Kamla Devi w/o Sh. Gajan Singh, r/o Village Cheema, P.O. Saru, Tehsil & District Chamba, H.P. by the (1) The Registrar, H.P. University of Horticulture & Forestry, Nauni, District Solan, H.P. (2) Senior Programmer Co-ordinator, Dr. Y.S. Parmar, University of Horticulture & Forestry, Krishi Vigyan Kendra Chamba at Saru, District Chamba from 1998 to 2012 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers".**

2. **"Whether demand of Smt. Kamla Devi w/o Sh. Gajan Singh, r/o Village Cheema, P.O. Saru, Tehsil & Distt. Chamba, H.P. to pay her wages of Clerical Class-III post instead of class IV post of beldar on daily wages along-with arrears of difference of wages for the period of her services from 1998 to 2012 on account of clerical duties performed by her, is legal and justified? If yes, what monetary benefits the above worker is entitled to from the above employer?"**

2. It may be stated here that when the proceedings subject matter of the aforesaid reference no. 13/2014 were pending conciliation before the functionaries of the Appropriate Government, the services of the petitioner were dispensed with by the respondent w.e.f 21.04.2013 without seeking the permission of the conciliation officer or the labour court as was required in view of the provision contained in section 33 of the Act. When the Reference no. 13 of 2014 was received by this court, the services of the petitioner were already terminated by the respondent. The petitioner while filing the claim in the Reference so received by this court made the elaborate pleadings and even claimed the relief of reinstatement in the same though it was out of the scope of the Reference. It appears that in order to avoid this technical objection, the petitioner filed another Direct Claim for her reinstatement which was registered as Reference no. 583 of 2015.

3. Since both the reference and the direct claim referred hereinabove are closely connected to each and can not be disposed of separately in order to avoid self contradictory findings, therefore, both the claims are taken up together for disposal for the sake of the convenience. A single Award is being passed and a signed copy of the same shall be placed on the file of the Direct Claim no. 583 of 2015.

4. The case of the petitioner as made out from the claim petition filed in support of the reference no. 13 of 2014 is that she was engaged by the respondent No. 2 on muster rolls basis as casual labourer on 01.07.1998. She was, however, given intermittent breaks upto December, 2001 and was permitted to mark her presence for 18 to 20 days per month despite of the fact that she worked for whole month. Such breaks were intentionally given to her so that she could not complete 240 days in a calendar year and claim the rights available under labour laws. In the month of December, 2001 her services were verbally disengaged without following the process of law. Feeling aggrieved, the petitioner filed one Original Application before Hon'ble Administrative Tribunal, Shimla assailing her illegal retrenchment and the legality of the fictional breaks given to her time to time. Her services were re-engaged during the application itself but on contractual basis on fixed monthly wages of Rs.1650/-. Breaks were still given to her in such a manner that she could not complete minimum 240 working days in any of the calendar year. The Original Application was decided by the Hon'ble Tribunal on 22.4.2004 with the observations that since the services of the petitioner were already re-engaged, therefore, her services be not

disengaged except in accordance with law and her contract be renewed year to year basis. The petitioner has further come up with the case that she is highly educated having diploma in stenography etc. and was engaged against the vacant post of Jr. Scale Stenographer and DPL and performed her duties of clerical nature but was paid for the post of Class-IV and she was entitled for equal wages for equal work. Frequent requests were made to the authorities of the university by her to permit her to mark her presence for full days yet she was forced to mark on presence only for 18 to 20 days and her contract was renewed year to year basis. The petitioner has come up with the plea that her service was intentionally interrupted by giving her fictional/artificial breaks so that she could not complete the required criteria for regularization and despite of having put more than 16 years of continuous service with the respondents, she was deprived of her legitimate rights by giving her fictional breaks. The petitioner has pleaded that when the matter was pending conciliation before the conciliation officer, her services were terminated on 20.4.2013 and her contract was not renewed. On such averments, the petitioner has prayed for the relief that since her services stand terminated w.e.f. 21.4.2013 on expiry of contract, therefore, she be ordered to be re-engaged. It is further prayed that the fictional/intermittent breaks given to her be counted for the purpose of continuous service and she be paid the wages of clerk as she had worked as clerk throughout.

5. The respondents have resisted and contested the petition and taken up the plea that the petitioner was initially engaged as daily paid labourer for three months for performing seasonal nursery work w.e.f. 01.7.1998 to 30.9.1998 and later on she worked in such a capacity till December, 2001. It is further stated that she was engaged as per availability of work and she has wrongly pleaded that she was engaged during full month and paid only for 18 to 20 days. As per the respondents, a new scheme for labour on contract was introduced w.e.f. 05.12.2001 and she was engaged as per the new policy. It is denied that fictional breaks were given to her. Now university is said to have been employing the labour on outsource basis vide Government Notification dated 30.4.2013. The respondents have specifically denied that the petitioner was engaged against the post of Junior Scale Stenographer and had performed her duties as such. It is submitted that the services of the petitioner were changed from daily wager to contractual basis in accordance with the provisions of standing instructions and the same were accepted by her without any reservation. It is pleaded in para no.7 of the reply that the petitioner has worked only for 12 months from 1.7.1998 to 31.12.2001 as per requirement of the work and she has not performed the duties of work and her petition was liable to be dismissed.

6. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made by the respondents in the reply.

7. From the pleadings of the parties and the crux of the reference following issues were framed on 23.07.2014 for determination in Reference no. 13 of 2014:—

1. Whether time to time termination of the services of the petitioner by the respondents from time to time between 1998 to 2012 is illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled for back wages, salary, seniority, past service benefits and compensation etc. as prayed for? ? . .*OPP.*

3. Whether the petitioner has performed the duty in the clerical class-III post instead of class-IV post of beldar and as such entitled to arrears of difference of wages from the period 1998 to 2012 as alleged? . .*OPP.*

Relief.

8. It may be stated at this stage that the petitioner filed a direct claim petition registered as Reference no. 583 of 2015 subsequently as already pointed hereinabove, and pleaded the same facts in the claim as were pleaded in the first claim and prayed for the relief of reinstatement. As per the averments made in direct claim/reference No. 583/2015, the reference no. 13/14 was pending adjudication before this court and the respondent department had not renewed the contract of the petitioner after 20.4.2013 and therefore, her services were terminated without following the process of law. She has prayed for her reinstatement in this petition.

9. This direct claim/reference no. 583/14 is resisted and contested by the respondent referring in the reply already filed in reference no.13/2014. It is submitted that the reply filed therein may be read as part and parcel of this direct claim also. It is submitted that services of the petitioner were terminated for the reason that she has worked on contract and now as per latest scheme of the government, the workman could be engaged through outsource agency alone, hence her contract was not renewed. The respondent further pleaded that this claim be dismissed as not maintainable.

10. The petitioner filed rejoinder in this direct claim Reference No.583/2014 whereby the averments made in the petition are reaffirmed and those made in the reply denied. It is highlighted that new schemes were not applicable to the petitioner as she was old employee and schemes were to act in a prospective manner.

11. From the pleadings of the parties in this direct claim/reference No. 583/2015, following issues were framed on 8.11.2016:—

1. Whether the termination of the services of the petitioner by the respondent w.e.f 21.04.2013 is/was improper and unjust, as alleged ? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits, the petitioner is entitled to ? . .*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . .*OPR.*

4. Whether the petitioner has not come to the court with clean hands as alleged ? . .*OPR.*

5. Whether the petitioner has suppressed true and material facts from the court as alleged? . .*OPR.*

Relief

12. The parties led evidence in this claim as well and the petitioner examined herself as PW1 whereas, the respondent examined Shri Rajeev Rana the then Principal as RW1 and one Shri Rakesh as RW2. They also tendered some documents discussed hereinafter.

13. For the reasons recorded hereafter my finding in the issue framed in reference no.13/2014 are as under:—

Issue No. 1	:	Yes
Issue No. 2	:	Decided accordingly
Issue No. 3	:	No
Relief	:	Per operative portion of the Award

14. For the reasons recorded hereinafter my findings on the issues framed in reference no.583/2014 are as under:—

Issue No.1	: Yes
Issue No. 2	: Decided Accordingly
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Relief	: Per operative portion of the Award

REASONS FOR FINDINGS

Issues No.1 in reference No. 13 of 2014 and issue No. 1 framed in reference no. 583 of 2015

15. The factual matrix of this case is very material to understand the actual controversy. The initial engagement of the petitioner took place in the year 1998 as daily paid labourer. The mandays chart of the petitioner has been tendered as Ext. RW1/F (in claim no. 13/14). It shows that the petitioner was engaged as daily paid worker in July 1998 and she worked in continuity till December 2001. As per the petitioner, her services were verbally terminated in December 2001.

16. It is also an admitted fact that the petitioner immediately approached the Hon'ble Administrative Tribunal against her verbal termination and filed OA (D) 426/2001 for her reinstatement. Equally admitted is the fact that the petitioner was re-engaged in May 2002 after four months break, but the terms and conditions of her services were changed. This fact was brought to the notice of the Hon'ble Administrative Tribunal in the year 2004 but the Original Application was disposed off and the petitioner was made to work with fictional breaks. In the year 2012, the petitioner felt that she was being fictional breaks right intentionally right from the very beginning by the respondent so that she could not claim any right under the Industrial Disputes Act. She also felt that her service conditions were changed unilaterally in May 2002 so that the rights available to her under Industrial Disputes Act could not mature in her favour. She, therefore, raised a demand by way notice praying therein to condone her time to time termination right from the date of her initial engagement. The conciliation proceedings took place in the matter, but the respondent did not accede to the demands, hence, the Appropriate Government forwarded this dispute to this court in the shape of the present reference.

17. In the aforesaid backdrop, the petitioner has specifically pleaded that she use to work for the whole of the month but her presence was marked for 18 to 20 days so that she could not fulfill the requirement of minimum 240 working days in each calendar year and thereby claim the rights accruing under the Industrial Dispute Act. The respondent, on the other hand, denied the allegations and explained that the petitioner was engaged as per the availability of the work and it was wrong to allege that she was engaged for full month and paid only for 18-20 days. The respondent, therefore, denied that any fictional breaks were given to the petitioner at any point of time.

18. Since it is not the pleaded case of the respondent that the petitioner remained willfully absent for few days every month, therefore, the initial onus was upon the respondent to prove that

the petitioner was engaged as per the availability of the work and no fictional breaks were ever given. No evidence has been led by the respondent on this plea. No office order showing the nature of the work which was available for 18 to 20 days every month has been placed on the record. There can not be any such work which is available only for 20 days every month. Seasonal work can not be of such a nature that it has to be performed only for 20 days every month. Since the respondent has not led any evidence to throw light on the unique nature of the work available for 15 to 20 days every month, therefore, this plea is not established. Had the case of the respondent been to the effect that the services of the petitioner were engaged subject to the availability of funds, it could be presumed for a while that the monthly funds released for the execution of work through daily paid labourers got exhausted within first 20 days of the month, hence, the fictional break had to be given for the rest of the time. There are neither pleadings nor any such document has been placed on the record to show that the funds use to get exhausted within first 20 days of every month. Then why the petitioner was given the work of less than 30 or 31 days in every month by the respondent in between 1998 to December 2001? What was the intention behind all this?

19. The answer to all the aforesaid question is recorded in (Ext. P-1 in claim no. 13/14)), a letter dated 05.10.1999 addressed to the Registrar by the In-charge, KVK, Chamba at Baloo. A perusal of this letter shows that the petitioner was subjected to fictional breaks intentionally so that she could not complete 89 days in a single spell or 240 working days in a calendar year and thereby become a liability on the University. It is quite surprising to note that such letters are openly written and circulated by the officers of the respondent University. This letter in itself proves that the petitioner was subjected to intentional fictional breaks so that she could not become eligible to claim the rights vested upon her by the Industrial Disputes Act. This conclusion gets fortified by the oral evidence led by the respondent. Sh. Rajeev Raina, (RW1 in claim no. 13/14) clearly admitted the fact that sanction regarding the muster rolls was obtained for 30 and 31 days in the case of the petitioner. He thereafter tried to justify the fictional breaks by deposing that the petitioner was engaged as per the availability of the work and the funds. It may be stated here that plea of availability of funds has not been raised in the reply filed by the respondent. Oral evidence without any such foundation in the pleadings is inadmissible. Moreover, no document has been placed on the record to prove the fact that the meager funds were made available every month for execution of the work through daily paid labourers and those funds were exhausted within the first 20 days. After all, the public funds are spent by maintaining the complete records and such records could have been easily placed before this court for inspection. Since no evidence has been led by the respondent on this aspect, therefore, the statement of the petitioner made by her on oath is fully corroborated by the letter of the respondent University (Ext. P-1, in claim no. 13/14)) and, it is proved beyond doubts that the petitioner was given fictional breaks intentionally by the respondent with the sole motive to prevent her from claiming the benefits vested upon her under the Industrial Disputes Act.

20. The petitioner has though worked w.e.f 1998 to 2012 with fictional breaks, yet there has been a change in the terms and conditions of her employment. She had worked from July 1998 to December 2001 as daily paid labourer and after giving her four months break, she was re-engaged in May 2002 on contract basis. Before deliberating upon the legality of the change in the terms and conditions of the employment, it is necessary to firstly examine the effect of the fictional breaks given to the petitioner till December 2001, when she had worked as a daily paid labourer.

21. As aforesaid, the respondent has failed to prove that the fictional breaks were given to the petitioner in between July 1998 to December 2001 for insufficiency of funds and work. Rather, it has been proved from the letter Ext. P-1,in claim no. 13/14) that such breaks were given to her in order to prevent her from becoming a permanent liability on the respondent University. Thus the breaks were given to the petitioner in her services not for her fault but she was always willing to work and the work and funds were also available, hence the muster roll in her name was obtained

for the whole month. In these facts and circumstances, it is held that the fictional breaks given to the petitioner for few days every month w.e.f July 1998 to December 2001 when she worked as a daily paid labour were illegal and unjustified. It is further held that the period of breaks during the aforesaid period is liable to be counted towards the continuity of her services and seniority. Thus when this period is counted towards her working days and continuity in services, it is proved that she has worked w.e.f July 1998 to December 2001 in continuity and completed the work of minimum 240 days in preceding twelve calendar months before her services were firstly terminated in December 2001 without any reasons. In this situation, the respondent was bound to comply with the provisions contained in section 25 F of the Act at the time of the termination of the services of the petitioner in the year December 2001.

22. The moment the services of the petitioner were illegally terminated by the respondent in December 2001 by verbal orders, she filed Original Application before the Hon'ble Administrative Tribunal against her illegal retrenchment and at the same time challenged the act of giving her willful fictional breaks. Within four months of her illegal termination, the respondent re-engaged her services and changed the terms and conditions of her employment unilaterally. She was shown to have been engaged on contractual basis on fixed monthly salary of Rs. 1650/- for a short spell on quarterly basis by giving her intermittent breaks. The OA(D) 426/2001 filed by her was disposed off in the year 2004 by the Hon'ble Tribunal on finding that she has been re-engaged, but the real issue regarding the legality of the fictional breaks and illegal termination of her services in December 2001 remained unaddressed. The order passed by the Hon'ble Administrative Tribunal dated 22.04.2004 is Ext. P-3, in claim no. 13/14) on the record.

23. In the aforesaid backdrop, the most important question that arises for consideration is whether the respondent could have changed the terms and conditions of the petitioners employment on her re-engagement after giving her four months break w.e.f January 2002 to April 2002 without her consent obtained in the prescribed form?

24. Before examining this question from every angle, it may be stated here that the respondent has offered no explanation for terminating the services of the petitioner in December 2001. There is nothing on the record to prove as to why the services of the petitioner were dispensed with at the end of the December 2001 and why her services were re-engaged in May 2002? As already held above, the petitioner is proved to have worked for more than 240 days preceding her first termination in December 2001, and the compliance of section 25 F was mandatory. Since no such compliance was made, break for four months becomes illegal on the face of it. It is therefore, held that the petitioner was given a fictional break for four months w.e.f December 2001 April 2002 without any justification and despite of the availability of the funds and work and such a break is illegal on the face of it and deserves to be counted towards her seniority and continuity in services.

25. The next question to be examined is regarding the change of the terms and condition of the service of the petitioner on her re-engagement in May 2002. Why the terms and conditions of the employment of the petitioner were altered? Whether the petitioner has agreed to such a change in the terms and conditions of her services in the prescribed manner? This question needs to be answered from the material available on the record?

26. Learned Counsel for the respondent has argued that since there is no reference by the Appropriate Government regarding the change of the terms and condition of the services of the petitioner, therefore, this court can not travel outside the scope of the reference to answer this question. On the other hand, the learned AR has submitted that when the reference is very clear regarding the fictional breaks to the petitioner right from the very beginning till the year 2012, therefore, all the question including the change of the terms and conditions of the petitioner's

services are implied in the reference itself and the reference can not be answered completely unless such questions are dealt with.

27. When the nature of the controversy involved in this case is examined along-with the reference received by this court, it can not be said that this court can not examine the question of the change of the terms and condition of the service of the petitioner in May 2002. This question is implicit in the reference and the reference can not be conveniently answered without addressing this question as this court is supposed to adjudicate the legality of the fictional breaks given in between 1998 to 2012 in which the change in the terms and condition of the services of the petitioner took place. Hence, this court proceeds to answer the smaller question regarding the change in the terms an conditions of the services before answering the complete reference.

28. To justify the change in the terms and conditions of the employment of the petitioner, the respondent has taken the shelter of a notification of the Government of Himachal Pradesh dated 5th December 2001 (Ext.RW1/B, in claim no. 13/14)). It speaks of engagement of labour on contractual basis w.e.f 01.01.2002 in the respondent University. It has also a saving clause. Those who are already been working as daily wagers and are figuring in the seniority list circulated in June 2001 are exempted from the scope of this notification. Rightly so, this notification can not have the retrospective effect. It can not affect those workmen, who are already working for years together as daily paid labourers. The rights already accrued to such workers can not be curtailed by any subsequent notification. The second test in this notification is the seniority list circulated in June 2001. The workmen shown in this list have been exempted from the preview of this notification. The name of the petitioner certainly is not appearing in this seniority list. What is the effect? It has already been held hereinabove that the petitioner was engaged in 1998 and she was given intentional fictional breaks in such a manner so that she could not complete 240 working days in any of the calendar year and her name could not appear in any of the seniority list. Since this court has already condoned such unauthorized breaks given till December 2001 and has further held that the period of breaks shall be counted towards her working days, therefore, the petitioner is proved to have worked for minimum 240 days in the years 1999 to 2001. Had she been not subjected to fictional breaks, her name would have appeared in the seniority list as circulated in the year June 2001. In this manner also, the petitioner shall not be governed by this notification. The petitioner can not be made to suffer for the unlawful fictional breaks given by the respondent and the Industrial Disputes Act comes forward for her rescue.

29. Another notification is dated 14 June 2002 (Ext.RW1/C, in claim no. 13/14)). This notification demonstrates the manner in which the contractual engagement of the labour shall take place in the University. It was decided that every labourer shall be given work in two spells of 89 days each in a calendar year with at least 15 days break after every spell. This notification was adopted in the case of the present petitioner during the year 2002 to 2012. she was never given the work of more than 178 days in any of the calendar year. Since the petitioner was was not governed by both these notification for the reasons recorded hereinabove, there was no question of converting her services from daily wage labour to contractual labour. Moreover, the mode adopted by the university to give 89 days work and then intentional breaks to the labourers is a clear cut violation of the industrial dispute Act. No employer can intentionally adopted such methods which would circumvent any of the provision of the industrial Dispute Act and make the same ineffective. When the work and fund was always available, giving work in piecemeal to the workmen is a clear cut mode devised to make the beneficial provisions of the industrial dispute Act a nugatory.

30. Moreover, there is no material on the record to prove that the consent of the petitioner for change of her service conditions was taken in writing and she was fully apprised of the change of such conditions. The respondent University has harped upon the plea that the petitioner was re-

engaged on contractual basis and the contract was renewed from year to year after May 2002 till 2012. Surprisingly, no such contract has seen the light of the day. No such document has been placed on the record for the perusal of this court. If the petitioner had entered a contract, her signatures would have been available on the same and the court would have presumed that she had signed the agreement after understanding the terms and conditions of such agreement. It is to be remembered here that the petitioner is a workman. Workmen are generally not well conversant with their rights. As aforesaid, no such contract which the petitioner has ever signed has been placed on the record. When the petitioner appeared as PW1, (in claim no. 13/14) in the witness-box, no contract ever signed by her was shown to her. There are no suggestions to her regarding the execution of the agreement by her. The respondent has examined Sh. Rajeev Raina as RW1, (in claim no. 13/14) in the witness-box. He has also not tendered on the record any agreement ever executed by the petitioner. This witness has tried to make out a case that the petitioner has accepted the term and contradiction of the contract, but as aforesaid, no such agreement was shown to her. No such contract was placed on the record. When the petitioner was thrown out of job in the year 2002 and reengaged after four months, she can not be expected to raise any protest regarding the terms and conditions of her employment, when no consent in the written form was obtained from the petitioner.

31. Thus for the aforesaid reasons, it is held that the respondent has failed to prove by leading cogent evidence that the petitioner has consented to change the terms and conditions of her employment at the time of her re-engagement in may 2002. It is further held that despite of the availability of the work throughout the year, the petitioner was given the work for less than 240 days in every year w.e.f 2002 to 2013 with the sole motive that the petitioner could not claim any right under Industrial Disputes Act. It is also established that the work and funds were always available with the respondent throughout and fictional breaks were given to her without her consent. It is also held that the breaks given to the petitioner w.e.f her initial engagement till the year 2013 without her consent, so that she was not able to complete minimum 240 days in each calendar year. It is also held that since the petitioner was engaged much prior to the year 2001 and 2002 when the respondent University decided to engage the workmen on contracts and not on daily wages, therefore, these decisions were not applicable in the case of the petitioner. She was a daily wager and has remained as a daily wager till the year 2013 and her termination on account of non renewal of the contract would amount to her termination under Section 25-F of the Act for reason that there has been change in the terms and conditions of the employment without her consent. Thus violation of Section 25-F of the Act has taken place as the policy of renewal of contracts could not have been applied to her case. The petitioner shall be treated as daily wager from the date of her initial engagement till her services were terminated on the pretext that contract was not renewed. Since her services conditions were changed without her consent, as held hereinabove therefore, alleged contract which have not been tendered on the record can not bind the petitioner. The petitioner was initially engaged as daily wager, and she is therefore, held as a daily wager and she has worked with the respondent till 20.4.2013 with fictional breaks and thus fictional breaks are also unwarranted as there was work always with the respondent. These fictional breaks were given to her with a view to prevent her from claiming the rights under the Industrial Disputes Act hence issue no.1 as framed in the reference no.13/2014 and reference no.583/2014 are held in favour of the petitioner.

ISSUE No.3 in reference no.13/2014

32. The petitioner has claimed that the work of the Class-iii was taken from her by the officers of the University and she, therefore, was entitled to the wages payable to the class-III employees and not of the class-IV employees, as was paid to her. The petitioner has placed on record various documents in support of her such claim and has made statement in her affidavit to the same effect. The documents consist of copies of various office orders issued by the authorities during various conferences held in the University. In Ext. P-10, (in claim no. 13/14) it has been

mentioned that in addition to her own duties, she shall assist the Superintendent. The petitioner was peon and at the same time she was asked to assist the Superintendent. The duties of the Superintendent is to supervise all the affairs of the workers working under him. There can be no other assistance by a peon to the Superintendent except for helping him in carrying the files to his superior and bring them back or assist him in arranging the files. These are the duties of the peon and it can not be said that she was in any manner performing the clerical work by the written orders of her superiors. She has not spoken on oath specifically as to in which manner she use to assist the Superintendent in performing his duty of Superintendence. Ext. P-11 to P-19, (in claim no. 13/14) are various office orders regarding the committees formed for the smooth functioning of various training programmes or the seminars held in the University. The petitioner has been included in those committees to assist the registration of the members. A peon asked to assist the registration work of the participants with other clerks does not become a clerk nor thus a peon perform the duties of the clerk. To assist means to perform the duties as a peon and not to replace the clerical staff deputed in such committees. Thus it can not be said that the petitioner was compelled to perform the duties of the clerk in the respondent University despite of the fact that she was a peon and not a clerk. The petitioner has tendered a copy of the log-book of the Xerox machine as Ext. P-20, (in claim no. 13/14) and has claimed that it has been filled up by her. Even if, it is assumed for a while that she has made entries in this log book, it can not be presumed that she was deputed on the Xerox machine by the University. Unless, a specific office order is proved by her on the record to the effect that she was directed to perform the clerical works on the Xerox machine of the university, it can not be said that she was compelled to work on the seat of Class-III by the University. She has not placed any representation on the record moved by her during her tenure to the effect that she being a class iv employee should not be compelled to do the work of Class-III employee of the University. There is no representation on the record having been made by her during her services to the effect that she has requested the respondent to release the salary of the class-III employee to her or to not take the work of Class-iii employee form her. In-case, the petitioner was voluntarily performing the clerical jobs and assisting the clerical staff, it can not be said that she was ordered to do so by the University management and she had no other choice but to work in the capacity of the clerk despite of the fact that her appointment was that of the peon and not the clerk. The learned AR's for the petitioner have heavily relied upon a letter Ext. P-9, (in claim no. 13/14) addressed to Registrar by the in-charge KVK Chamba, where the request was made to engage the services of DPL Kamla Devi against the post of Jr. Scale Stenographer with the request that her services be continued and work of the stenographer be taken from her and she was trained in shorthand and English typing and handling the computers. This letter is dated 23.11.2000. It may be stated here that no such permission was ever received from the Registrar and the petitioner was never engaged as Jr. Scale Stenographer. In case, the petitioner was a trained Steno and could type and handle the computer, she would not have become the class-III employee automatically when she was engaged as Daily Paid Labour and the muster roll for daily labour was issued in her favour. In case, the petitioner was doing the work of the class-III employee in the office for the reason that she loved to work as such and she wanted to win the confidence of her co-worker and help them in their work, the respondent University does not become liable to treat her as Class-III employee and release the wages of Class-III to her when there is no such office order issued by the office asking her to the work of class-III employee. There is nothing on the record to show that she was compelled to work as clerk in the office and she would have faced the wrath of her superiors, in case, she had refused to work or stopped working as a clerk. Since there was no office order issued to direct her to work as a class-III employee, no action could have been taken against her, in case, she had refused to work as such. When such is the position, She is held as class-IV employee of the department and not entitled to claim the wages as class-III employee. It is further held that the petitioner is entitled to the wages payable to class-III employees of the University. The letter aforesaid, does not prove the case of the petitioner, in any manner. The due drawn statement filed and proved on the record by the petitioner as Ext. P-24, (in claim no. 13/14) is of no relevance. This issue is held in negative.

ISSUE NO. 2 of reference no.13/2014 and 583/2015.

33. Both these issues are also taken up together as they are also inter connected and interlinked. Since it has been held that the petitioner was initially engaged as daily paid employees on muster roll and her service condition were changed without her consent on the plea that the policies adopted by the University spoke of engagement only for 89 days and a compulsory break thereafter, it is therefore, held that the fictional breaks given to the petitioner were illegal and those service breaks are liable to be counted towards her seniority, wages and continuity till the date of her actual termination. The petitioner shall be entitled to the back wages as per the prevalent rate to be calculated by the University for the break periods as she was always prepared to work and she was prevented from working by the action of the respondent University. The petitioner is held entitled to receive the wages for the the days of her breaks as DPL right from the date of her engagement till the year 2013 when she was disengaged on the ground that the labour was to be deployed on outsource basis. The wages shall be paid for the whole year (year-wise) and the days shall be calculated from the mandays chart proved on the record. For instance, as the petitioner has been shown to have worked for 228 days in the year 2001, she shall be paid the wages as per the rates prevailing in the year 2001 for the days of her break i.e. 365-228=137 days. Same formula shall be applied till the year 2013 when her services were disengaged. After calculating the entire amount the respondent shall pay the same to the petitioner as back wages.

34. The most crucial question that arises for determination is whether the petitioner is entitled for reinstatement or compensation in lieu of the same. It is argued on behalf of the petitioner that she has worked for around 16 years and there are regularization policies of the department in place, and since her termination was wrong, therefore, she is entitled for the relief of reinstatement as per the policies of the state government. On the other hand, the learned counsel for the respondent has argued that petitioner was not entitled for any relief.

35. While going through peculiar facts and circumstances of this case it is no doubt clear that services of the petitioner were illegally terminated in the year 2001 and thereafter she was engaged on the alleged contracts for many years and later on her her contract was not renewed on the plea that the government has introduced the system of outsourcing of the workers, Now the question to be considered by this court as whether she is entitled for reinstatement or any relief lesser to reinstatement can be granted in her favour. The Hon'ble Supreme Court of India has laid broad guidelines on the point as to when the relief of reinstatement is be granted by the labour court and when compensation in lieu of reinstatement has to be awarded in **Deputy Executive Engineer v/s Kuberbhai Kanjibhai reported in 2019 (4) SCC 307**. The relevant portion of the judgment is as under:—

> **[9]** In our opinion the case at hand is covered by the two decisions of this Court rendered in the case of Bharat Sanchar Nigam Limited *vs.* Bhurumal, 2014 7 SCC 177 and District Development Officer and Anr. *vs.* Satish Kantilal Amerelia, 2018 12 SCC 298.
>
> **[10]** It is apposite to reproduce what this Court has held in the case of Bharat Sanchar Nigam Limited (supra):
>
> **"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be**

given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law **that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3), 2006 4 SCC 1]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.**

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

[11] Here is also a case where the respondent was held to have worked as daily wager or muster role employee hardly for a few years in R & B of the State; Secondly, he had no right to claim regularization; Thirdly, he had no right to continue as daily wager; and lastly, the dispute was raised by the respondent (workman) before the Labour Court almost after 15 years of his alleged termination.

[12] It is for these reasons, we are of the view that the case of the respondent would squarely fall in the category of cases discussed by this Court in Para 34 of the judgment rendered in Bharat Sanchar Nigam Limited (supra).

[13] In view of the foregoing discussion, we are of the considered view that it would be just, proper and reasonable to award lump sum monetary compensation to the respondent in full and final satisfaction of his claim of re-instatement and other consequential benefits by taking recourse to the powers under Section 11A of the Industrial Disputes Act, 1947 and the law laid down by this Court in Bharat Sanchar Nigam Limited's case (supra).

36. Relying upon the aforesaid ruling, It is important to mention here here that petitioner has not alleged the violation of Sections 25-G and 25-H of the Act, in both the claims. Neither there is a reference to this effect received fro the appropriate Government. The petitioner has nowhere pleaded that there were workmen junior to her and they were retained in the year 2001 when her services were firstly terminated. It is also not the case of the petitioner that any fresh workman was engaged after the year 2001 on daily paid basis and that particular workman was regularized with the passage of time by taking to recourse to the policies of the State Government.

It is also not the case of the petitioner that she was engaged initially against a sanctioned post by following recruitment procedure. It is also not the case of the petitioner that workmen junior to her were retained in the year 2001 when her services were terminated and those junior workmen were regularised with the passage of time, whereas, she was re-engaged on contracts. When such is the position then only violation in this case that is made out from the facts and circumstances of the case is the violation of Section 25-F of the Act and that too in the year 2001 when she was firstly terminated without complying the provisions of section 25F of the Act. Rather she was not permitted to complete the work of minimum 240 days in each calendar year, whereas, other similar situated workmen were treated differently. Such findings have already been given in the preceding paras of this Award. Since, her time to time termination has also been condoned in the preceding paras of the Award, she is presumed to have completed the work of minimum 240 days preceding her termination in the year 2001, hence, the violation of section 25 F has been held to have taken place.

37. It has also already been held that the respondent changed the terms and conditions of the employment of the petitioner without formally obtaining her consent after explaining the nature of change in her employment. She was reengaged on contracts for 89 days in a spell, and no such contract was filed and proved on the record to prove the contents of the same. It is however, clear from the averments made by the petitioner in both of her petitions that she was well aware of the fact that her service conditions were changed on her re engagement in the year 2002. The court has held that the services of the petitioner w.e.f to 1998 to 2013 shall be treated on daily wages with condonation of the breaks for the reasons that her services conditions were changed without taking recourse to the provision contained in section 9A of the Act. One fact is , however very much clear from the pleading of the petitioner that she was very much aware of the fact that her service conditions have been changed in may 2002. Para no. 2 & 3 of the claim filed in claim petition no. 13/2014 clearly exhibit that she was well aware of this fact. In claim no. 583 of 2015, similar averments have been made and the grievance of the petitioner has been to the effect that her contract was not being renewed. Despite of this knowledge, the petitioner did not raise the issue of fictional breaks and change in the terms and and remained quite till the year 2012. This issue was raised for the first time by her in the year 2012 by way of demand notice. The petitioner has thus not raised issue at the earliest and this is an additional ground to deny reinstatement to the petitioner. It appears that she firstly awaited for 10 years to pass so that she could bring her case under regularization policy, and only thereafter she raised the demand so that she could get double benefit. When she was well aware of the fact that she was being given fictional breaks right from the very beginning and the terms and conditions of her employment were also changed without obtaining a written consent from her, she could have raised issue at the earliest so that the court would have intervened at earliest and set the wrong to right. The petitioner has placed on the record of claim no. 13/14 several regularization policies of the State Government with respect the to the daily wagers ranging from the year 1996 to 2015 as Ext. P-4 to P-8. It is thus clear that she was conscious of the fact from the very beginning that she could also get the benefit of these policies. Despite of all this she did not raise the issue of fictional breaks at earliest and delayed her matter til the year 2012. Thus the delay occasion on the part of the petitioner to raise the issue of fictional break at earliest, can not be overlooked and the petitioner is not entitled to the relief of reinstatement with seniority and continuity. Rather she is held entitled to the relief of compensation in lieu of reinstatement and the back-wages in the manner as mentioned hereinabove.

38. In view of the aforesaid discussion, taking into account the length of the service rendered, her age and other factors discussed hereinabove, ends of justice shall be met, in case, the petitioner is held entitled to receive a sum of Rs. 3,00,000/- in lump-sum as one time compensation in lieu of the violation of the provision contained in section 25 F of the Act by the respondent. The petitioner is also held entitled of the back-wages to be calculated by the University in the manner illustrated hereinabove, and also pay the same to the petitioner along-with the compensation. Both the issues are decided accordingly.

ISSUES NO. 3 to 5 of reference no. 583/2015

39. It may be stated here that the parties have led evidence in the claim petition no. 583 of 2015. same set of witnesses have been examined by the parties as were examined in claim no. 13 of 2014 except for RW2, Sh. Rakesh Sharma, who has tendered o the record the mandays chart fo the petitioner as Ext. RW1/A and copy of a letter and standing instructions as Ext. RW1/B to RW1/D. These documents are formal in nature and stand already discussed in the preceding para of the Award. The petitioner has tendered an application moved to the respondent to get her contract renewed as Ext. PW1/B. She has also tended on the record copy of the Order passed by the Hon'ble Administrative Tribunal and statement of Sh. Rajeev Raina recorded in the reference no. 13 of 2014 as PW1/C and Ext. PX respectively. These documents stands already discussed and need no repetition. The averments in the subsequent direct reference have been made in reference no. 13 of 2014 and have already been discussed.

40. Since, the petitioner has been held entitled to the relief by this court, therefore, the claim is maintainable and the petitioner has also come to the court with cleans hands and she has not suppressed any material facts from the court. Thus issues no. 3 to 5 as framed in claim no. 583 of 2015 are held against the respondent.

Relief in both the petitions:-

41. In view of the detailed discussion on all the issues hereinabove, the claim petitions are partly allowed. Both the petitions are held maintainable. The fictional breaks given to the petitioner are condoned holding that the change of the terms and conditions of the employment of the petitioner was in violation to the provision contained in section 9A of the Act as the consent of the petitioner was not obtained in the manner as required. The petitioner is held entitled to Receive compensation of Rs. 3,00,000/- (Three Lakhs Only) as an alternative relief. The prayer for reinstatement is declined for detailed reasons given in the Award. Apart from this, the petitioner is held entitled to the back-wages for the period of absence commencing from 1998 to 2013 to be calculated by the University as per the proved mandays chart and as per the directions given by this court in the preceding para's of the Award. Both the amounts shall be paid within four months by the respondents after the publication of the award, failing which the respondent shall be liable to pay the interest @ 6% per annum from the date of the publication of the award till the actual payment of the amount. Let the signed copy of this Award be placed in the file No. 583 of 2015.

42. The reference is answered in aforesaid terms and the direct reference is decided accordingly. Two copies of this common Award be sent to the Appropriate Government for publication in the official gazette for the purpose of both the claims. Both the files after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of May, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Chamba)

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)

Ref No. : 583/2015

Date of Institution : 30-11-2015

Date of Decision : 26-05-2022

Smt. Kamla Devi w/o Shri Gajan Singh, r/o Village Cheema, P.O. Saru, Tehsil & District Chamba, H.P. . .*Petitioner* .

Versus

1. The Registrar, H.P. University of Horticulture & Forestry, Nauni, District Solan, H.P.

2. Senior Programmer Co-ordinator, Dr. Y.S. Parmar, University of Horticulture & Forestry, KrishI Vigyan Kendra Chamba at Saru, District Chamba, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri T.R. Bhardwaj, Ld. AR
Shri I.S. Jaryal, Ld. AR

For the Respondent(s) : Shri Munish Kumar, Ld. Adv.

And

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Smt. Kamla Devi w/o Shri Gajan Singh, r/o Village Cheema, P.O. Saru, Tehsil & District Chamba, H.P. . .*Petitioner* .

Versus

1. The Registrar, H.P. University of Horticulture & Forestry, Nauni, District Solan, H.P. . .*Respondent* .

Reference/Direct Claim Petition under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri T. R. Bhardwaj, Ld. AR
Shri I. S. Jaryal, Ld. AR

For the Respondent(s) : Shri Munish Kumar, Ld. Adv.

AWARD

The following reference registered as Reference No. 13 of 2014 was received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

1. **"Whether time to time termination of the services of Smt. Kamla Devi w/o Sh. Gajan Singh, r/o Village Cheema, P.O. Saru, Tehsil & District Chamba, H.P. by the 1.) The Registrar, H.P. University of Horticulture & Forestry, Nauni, District Solan, H.P. 2.) Senior Programmer Co-ordinator, Dr. Y.S. Parmar, University of Horticulture & Forestry, Krish Vigyan Kendra Chamba at Saru, District Chamba from 1998 to 2012 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers".**

2. **"Whether demand of Smt. Kamla Devi w/o Sh. Gajan Singh, r/o Village Cheema, P.O. Saru, Tehsil & Distt. Chamba, H.P. to pay her wages of Clerical Class-III post instead of class IV post of beldar on daily wages along-with arrears of difference of wages for the period of her services from 1998 to 2012 on account of clerical duties performed by her, is legal and justified? If yes, what monetary benefits the above worker is entitled to from the above employer?"**

2. It may be stated here that when the proceedings subject matter of the aforesaid reference no. 13/2014 were pending conciliation before the functionaries of the Appropriate Government, the services of the petitioner were dispensed with by the respondent w.e.f 21.04.2013 without seeking the permission of the conciliation officer or the labour court as was required in view of the provision contained in section 33 of the Act. When the Reference no. 13 of 2014 was received by this court, the services of the petitioner were already terminated by the respondent. The petitioner while filing the claim in the Reference so received by this court made the elaborate pleadings and even claimed the relief of reinstatement in the same though it was out of the scope of the Reference. It appears that in order to avoid this technical objection, the petitioner filed another Direct Claim for her reinstatement which was registered as Reference no. 583 of 2015.

3. Since both the reference and the direct claim referred hereinabove are closely connected to each and can not be disposed of separately in order to avoid self contradictory findings, therefore, both the claims are taken up together for disposal for the sake of the convenience. A single Award is being passed and a signed copy of the same shall be placed on the file of the Direct Claim no. 583 of 2015.

4. The case of the petitioner as made out from the claim petition filed in support of the reference no. 13 of 2014 is that she was engaged by the respondent No. 2 on muster rolls basis as casual labourer on 01.07.1998. She was, however, given intermittent breaks upto December, 2001 and was permitted to mark her presence for 18 to 20 days per month despite of the fact that she worked for whole month. Such breaks were intentionally given to her so that she could not complete 240 days in a calendar year and claim the rights available under labour laws. In the month of December, 2001 her services were verbally disengaged without following the process of law. Feeling aggrieved, the petitioner filed one Original Application before Hon'ble Administrative Tribunal, Shimla assailing her illegal retrenchment and the legality of the fictional breaks given to her time to time. Her services were re-engaged during the application itself but on contractual basis on fixed monthly wages of Rs.1650/-. Breaks were still given to her in such a manner that she could not complete minimum 240 working days in any of the calendar year. The Original Application was decided by the Hon'ble Tribunal on 22.4.2004 with the observations that since the services of the petitioner were already re-engaged, therefore, her services be not

disengaged except in accordance with law and her contract be renewed year to year basis. The petitioner has further come up with the case that she is highly educated having diploma in stenography etc. and was engaged against the vacant post of Jr. Scale Stenographer and DPL and performed her duties of clerical nature but was paid for the post of Class-IV and she was entitled for equal wages for equal work. Frequent requests were made to the authorities of the university by her to permit her to mark her presence for full days yet she was forced to mark on presence only for 18 to 20 days and her contract was renewed year to year basis. The petitioner has come up with the plea that her service was intentionally interrupted by giving her fictional/artificial breaks so that she could not complete the required criteria for regularization and despite of having put more than 16 years of continuous service with the respondents, she was deprived of her legitimate rights by giving her fictional breaks. The petitioner has pleaded that when the matter was pending conciliation before the conciliation officer, her services were terminated on 20.4.2013 and her contract was not renewed. On such averments, the petitioner has prayed for the relief that since her services stand terminated w.e.f. 21.4.2013 on expiry of contract, therefore, she be ordered to be re-engaged. It is further prayed that the fictional/intermittent breaks given to her be counted for the purpose of continuous service and she be paid the wages of clerk as she had worked as clerk throughout.

5. The respondents have resisted and contested the petition and taken up the plea that the petitioner was initially engaged as daily paid labourer for three months for performing seasonal nursery work w.e.f. 01.7.1998 to 30.9.1998 and later on she worked in such a capacity till December, 2001. It is further stated that she was engaged as per availability of work and she has wrongly pleaded that she was engaged during full month and paid only for 18 to 20 days. As per the respondents, a new scheme for labour on contract was introduced w.e.f. 05.12.2001 and she was engaged as per the new policy. It is denied that fictional breaks were given to her. Now university is said to have been employing the labour on outsource basis vide Government Notification dated 30.4.2013. The respondents have specifically denied that the petitioner was engaged against the post of Junior Scale Stenographer and had performed her duties as such. It is submitted that the services of the petitioner were changed from daily wager to contractual basis in accordance with the provisions of standing instructions and the same were accepted by her without any reservation. It is pleaded in para no.7 of the reply that the petitioner has worked only for 12 months from 1.7.1998 to 31.12.2001 as per requirement of the work and she has not performed the duties of work and her petition was liable to be dismissed.

6. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made by the respondents in the reply.

7. From the pleadings of the parties and the crux of the reference following issues were framed on 23.07.2014 for determination in Reference no. 13 of 2014:—

1. Whether time to time termination of the services of the petitioner by the respondents from time to time between 1998 to 2012 is illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled for back wages, salary, seniority, past service benefits and compensation etc. as prayed for? ? . .*OPP.*

3. Whether the petitioner has performed the duty in the clerical class-III post instead of class-IV post of beldar and as such entitled to arrears of difference of wages from the period 1998 to 2012 as alleged? . .*OPP.*

Relief

8. It may be stated at this stage that the petitioner filed a direct claim petition registered as Reference no. 583 of 2015 subsequently as already pointed hereinabove, and pleaded the same facts in the claim as were pleaded in the first claim and prayed for the relief of reinstatement. As per the averments made in direct claim/reference No.583/2015, the reference no.13/14 was pending adjudication before this court and the respondent department had not renewed the contract of the petitioner after 20.4.2013 and therefore, her services were terminated without following the process of law. She has prayed for her reinstatement in this petition.

9. This direct claim/reference no.583/14 is resisted and contested by the respondent referring in the reply already filed in reference no.13/2014. It is submitted that the reply filed therein may be read as part and parcel of this direct claim also. It is submitted that services of the petitioner were terminated for the reason that she has worked on contract and now as per latest scheme of the government, the workman could be engaged through outsource agency alone, hence her contract was not renewed. The respondent further pleaded that this claim be dismissed as not maintainable.

10. The petitioner filed rejoinder in this direct claim Reference No.583/2014 whereby the averments made in the petition are reaffirmed and those made in the reply denied. It is highlighted that new schemes were not applicable to the petitioner as she was old employee and schemes were to act in a prospective manner.

11. From the pleadings of the parties in this direct claim/reference No. 583/2015, following issues were framed on 8.11.2016:—

1. Whether the termination of the services of the petitioner by the respondent w.e.f 21.04.2013 is/was improper and unjust, as alleged ? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits, the petitioner is entitled to ? . .*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . .*OPR.*

4. Whether the petitioner has not come to the court with clean hands as alleged ? . .*OPR.*

5. Whether the petitioner has suppressed true and material facts from the court as alleged ? . .*OPR.*

Relief

12. The parties led evidence in this claim as well and the petitioner examined herself as PW1 whereas, the respondent examined Shri Rajeev Rana the then Principal as RW1 and one Shri Rakesh as RW2. They also tendered some documents discussed hereinafter.

13. For the reasons recorded hereafter my finding in the issue framed in reference no.13/2014 are as under:—

Issue No.1	:	Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Relief	:	Per operative portion of the Award

14. For the reasons recorded hereinafter my findings on the issues framed in reference no.583/2014 are as under:—

Issue No.1	: Yes
Issue No.2	: Decided Accordingly
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Relief	: Per operative portion of the Award

REASONS FOR FINDINGS

Issues No.1 in Reference No. 13 of 2014 and issue No. 1 framed in reference no. 583 of 2015

15. The factual matrix of this case is very material to understand the actual controversy. The initial engagement of the petitioner took place in the year 1998 as daily paid labourer. The mandays chart of the petitioner has been tendered as Ext. RW1/F (in claim no. 13/14). It shows that the petitioner was engaged as daily paid worker in July 1998 and she worked in continuity till December 2001. As per the petitioner, her services were verbally terminated in December 2001.

16. It is also an admitted fact that the petitioner immediately approached the Hon'ble Administrative Tribunal against her verbal termination and filed OA (D) 426/2001 for her reinstatement. Equally admitted is the fact that the petitioner was re-engaged in May 2002 after four months break, but the terms and conditions of her services were changed. This fact was brought to the notice of the Hon'ble Administrative Tribunal in the year 2004 but the Original Application was disposed off and the petitioner was made to work with fictional breaks. In the year 2012, the petitioner felt that she was being fictional breaks right intentionally right from the very beginning by the respondent so that she could not claim any right under the Industrial Disputes Act. She also felt that her service conditions were changed unilaterally in May 2002 so that the rights available to her under Industrial Disputes Act could not mature in her favour. She, therefore, raised a demand by way notice praying therein to condone her time to time termination right from the date of her initial engagement. The conciliation proceedings took place in the matter, but the respondent did not accede to the demands, hence, the Appropriate Government forwarded this dispute to this court in the shape of the present reference.

17. In the aforesaid backdrop, the petitioner has specifically pleaded that she use to work for the whole of the month but her presence was marked for 18 to 20 days so that she could not fulfill the requirement of minimum 240 working days in each calendar year and thereby claim the rights accruing under the Industrial Dispute Act. The respondent, on the other hand, denied the allegations and explained that the petitioner was engaged as per the availability of the work and it was wrong to allege that she was engaged for full month and paid only for 18-20 days. The respondent, therefore, denied that any fictional breaks were given to the petitioner at any point of time.

18. Since it is not the pleaded case of the respondent that the petitioner remained willfully absent for few days every month, therefore, the initial onus was upon the respondent to prove that the petitioner was engaged as per the availability of the work and no fictional breaks were ever given. No evidence has been led by the respondent on this plea. No office order showing the nature of the work which was available for 18 to 20 days every month has been placed on the record. There can not be any such work which is available only for 20 days every month. Seasonal work can not be of such a nature that it has to be performed only for 20 days every month. Since the respondent has not led any evidence to throw light on the unique nature of the work available for 15 to 20 days every month, therefore, this plea is not established. Had the case of the respondent been to the effect that the services of the petitioner were engaged subject to the availability of funds, it could be presumed for a while that the monthly funds released for the execution of work through daily paid labourers got exhausted within first 20 days of the month, hence, the fictional break had to be given for the rest of the time. There are neither pleadings nor any such document has been placed on the record to show that the funds use to get exhausted within first 20 days of every month. Then why the petitioner was given the work of less than 30 or 31 days in every month by the respondent in between 1998 to December 2001? What was the intention behind all this?

19. The answer to all the aforesaid question is recorded in (Ext. P-1 in claim no. 13/14)), a letter dated 05.10.1999 addressed to the Registrar by the In-charge, KVK, Chamba at Baloo. A perusal of this letter shows that the petitioner was subjected to fictional breaks intentionally so that she could not complete 89 days in a single spell or 240 working days in a calendar year and thereby become a liability on the University. It is quite surprising to note that such letters are openly written and circulated by the officers of the respondent University. This letter in itself proves that the petitioner was subjected to intentional fictional breaks so that she could not become eligible to claim the rights vested upon her by the Industrial Disputes Act. This conclusion gets fortified by the oral evidence led by the respondent. Sh. Rajeev Raina, (RW1 in claim no. 13/14) clearly admitted the fact that sanction regarding the muster rolls was obtained for 30 and 31 days in the case of the petitioner. He thereafter tried to justify the fictional breaks by deposing that the petitioner was engaged as per the availability of the work and the funds. It may be stated here that plea of availability of funds has not been raised in the reply filed by the respondent. Oral evidence without any such foundation in the pleadings is inadmissible. Moreover, no document has been placed on the record to prove the fact that the meager funds were made available every month for execution of the work through daily paid labourers and those funds were exhausted within the first 20 days. After all, the public funds are spent by maintaining the complete records and such records could have been easily placed before this court for inspection. Since no evidence has been led by the respondent on this aspect, therefore, the statement of the petitioner made by her on oath is fully corroborated by the letter of the respondent University (Ext. P-1, in claim no. 13/14)) and, it is proved beyond doubts that the petitioner was given fictional breaks intentionally by the respondent with the sole motive to prevent her from claiming the benefits vested upon her under the Industrial Disputes Act.

20. The petitioner has though worked w.e.f 1998 to 2012 with fictional breaks, yet there has been a change in the terms and conditions of her employment. She had worked from July 1998 to December 2001 as daily paid labourer and after giving her four months break, she was re-engaged in May 2002 on contract basis. Before deliberating upon the legality of the change in the terms and conditions of the employment, it is necessary to firstly examine the effect of the fictional breaks given to the petitioner till December 2001, when she had worked as a daily paid labourer.

21. As aforesaid, the respondent has failed to prove that the fictional breaks were given to the petitioner in between July 1998 to December 2001 for insufficiency of funds and work. Rather, it has been proved from the letter Ext. P-1,in claim no. 13/14) that such breaks were given to her in order to prevent her from becoming a permanent liability on the respondent University. Thus the

breaks were given to the petitioner in her services not for her fault but she was always willing to work and the work and funds were also available, hence the muster roll in her name was obtained for the whole month. In these facts and circumstances, it is held that the fictional breaks given to the petitioner for few days every month w.e.f July 1998 to December 2001 when she worked as a daily paid labour were illegal and unjustified. It is further held that the period of breaks during the aforesaid period is liable to be counted towards the continuity of her services and seniority. Thus when this period is counted towards her working days and continuity in services, it is proved that she has worked w.e.f July 1998 to December 2001 in continuity and completed the work of minimum 240 days in preceding twelve calendar months before her services were firstly terminated in December 2001 without any reasons. In this situation, the respondent was bound to comply with the provisions contained in section 25 F of the Act at the time of the termination of the services of the petitioner in the year December 2001.

22. The moment the services of the petitioner were illegally terminated by the respondent in December 2001 by verbal orders, she filed Original Application before the Hon'ble Administrative Tribunal against her illegal retrenchment and at the same time challenged the act of giving her willful fictional breaks. Within four months of her illegal termination, the respondent re-engaged her services and changed the terms and conditions of her employment unilaterally. She was shown to have been engaged on contractual basis on fixed monthly salary of Rs. 1650/- for a short spell on quarterly basis by giving her intermittent breaks. The OA(D) 426/2001 filed by her was disposed off in the year 2004 by the Hon'ble Tribunal on finding that she has been re-engaged, but the real issue regarding the legality of the fictional breaks and illegal termination of her services in December 2001 remained unaddressed. The order passed by the Hon'ble Administrative Tribunal dated 22.04.2004 is Ext. P-3, in claim no. 13/14) on the record.

23. In the aforesaid backdrop, the most important question that arises for consideration is whether the respondent could have changed the terms and conditions of the petitioners employment on her re-engagement after giving her four months break w.e.f January 2002 to April 2002 without her consent obtained in the prescribed form?

24. Before examining this question from every angle, it may be stated here that the respondent has offered no explanation for terminating the services of the petitioner in December 2001. There is nothing on the record to prove as to why the services of the petitioner were dispensed with at the end of the December 2001 and why her services were re-engaged in May 2002? As already held above, the petitioner is proved to have worked for more than 240 days preceding her first termination in December 2001, and the compliance of section 25 F was mandatory. Since no such compliance was made, break for four months becomes illegal on the face of it. It is therefore, held that the petitioner was given a fictional break for four months w.e.f December 2001 April 2002 without any justification and despite of the availability of the funds and work and such a break is illegal on the face of it and deserves to be counted towards her seniority and continuity in services.

25. The next question to be examined is regarding the change of the terms and condition of the service of the petitioner on her re-engagement in May 2002. Why the terms and conditions of the employment of the petitioner were altered? Whether the petitioner has agreed to such a change in the terms and conditions of her services in the prescribed manner? This question needs to be answered from the material available on the record?

26. Learned Counsel for the respondent has argued that since there is no reference by the Appropriate Government regarding the change of the terms and condition of the services of the petitioner, therefore, this court can not travel outside the scope of the reference to answer this question. On the other hand, the learned AR has submitted that when the reference is very clear

regarding the fictional breaks to the petitioner right from the very beginning till the year 2012, therefore, all the question including the change of the terms and conditions of the petitioner's services are implied in the reference itself and the reference can not be answered completely unless such questions are dealt with.

27. When the nature of the controversy involved in this case is examined along-with the reference received by this court, it can not be said that this court can not examine the question of the change of the terms and condition of the service of the petitioner in May 2002. This question is implicit in the reference and the reference can not be conveniently answered without addressing this question as this court is supposed to adjudicate the legality of the fictional breaks given in between 1998 to 2012 in which the change in the terms and condition of the services of the petitioner took place. Hence, this court proceeds to answer the smaller question regarding the change in the terms an conditions of the services before answering the complete reference.

28. To justify the change in the terms and conditions of the employment of the petitioner, the respondent has taken the shelter of a notification of the Government of Himachal Pradesh dated 5th December 2001 (Ext.RW1/B, in claim no. 13/14)). It speaks of engagement of labour on contractual basis w.e.f 01.01.2002 in the respondent University. It has also a saving clause. Those who are already been working as daily wagers and are figuring in the seniority list circulated in June 2001 are exempted from the scope of this notification. Rightly so, this notification can not have the retrospective effect. It can not affect those workmen, who are already working for years together as daily paid labourers. The rights already accrued to such workers can not be curtailed by any subsequent notification. The second test in this notification is the seniority list circulated in June 2001. The workmen shown in this list have been exempted from the preview of this notification. The name of the petitioner certainly is not appearing in this seniority list. What is the effect? It has already been held hereinabove that the petitioner was engaged in 1998 and she was given intentional fictional breaks in such a manner so that she could not complete 240 working days in any of the calendar year and her name could not appear in any of the seniority list. Since this court has already condoned such unauthorized breaks given till December 2001 and has further held that the period of breaks shall be counted towards her working days, therefore, the petitioner is proved to have worked for minimum 240 days in the years 1999 to 2001. Had she been not subjected to fictional breaks, her name would have appeared in the seniority list as circulated in the year June 2001. In this manner also, the petitioner shall not be governed by this notification. The petitioner can not be made to suffer for the unlawful fictional breaks given by the respondent and the Industrial Disputes Act comes forward for her rescue.

29. Another notification is dated 14 June 2002 (Ext.RW1/C, in claim no. 13/14)). This notification demonstrates the manner in which the contractual engagement of the labour shall take place in the University. It was decided that every labourer shall be given work in two spells of 89 days each in a calendar year with at least 15 days break after every spell. This notification was adopted in the case of the present petitioner during the year 2002 to 2012. she was never given the work of more than 178 days in any of the calendar year. Since the petitioner was was not governed by both these notification for the reasons recorded hereinabove, there was no question of converting her services from daily wage labour to contractual labour. Moreover, the mode adopted by the university to give 89 days work and then intentional breaks to the labourers is a clear cut violation of the industrial dispute Act. No employer can intentionally adopted such methods which would circumvent any of the provision of the industrial Dispute Act and make the same ineffective. When the work and fund was always available, giving work in piecemeal to the workmen is a clear cut mode devised to make the beneficial provisions of the industrial dispute Act a nugatory.

30. Moreover, there is no material on the record to prove that the consent of the petitioner for change of her service conditions was taken in writing and she was fully apprised of the change of such conditions. The respondent University has harped upon the plea that the petitioner was re-engaged on contractual basis and the contract was renewed from year to year after May 2002 till 2012. Surprisingly, no such contract has seen the light of the day. No such document has been placed on the record for the perusal of this court. If the petitioner had entered a contract, her signatures would have been available on the same and the court would have presumed that she had signed the agreement after understanding the terms and conditions of such agreement. It is to be remembered here that the petitioner is a workman. Workmen are generally not well conversant with their rights. As aforesaid, no such contract which the petitioner has ever signed has been placed on the record. When the petitioner appeared as PW1, (in claim no. 13/14) in the witness-box, no contract ever signed by her was shown to her. There are no suggestions to her regarding the execution of the agreement by her. The respondent has examined Sh. Rajeev Raina as RW1, (in claim no. 13/14) in the witness-box. He has also not tendered on the record any agreement ever executed by the petitioner. This witness has tried to make out a case that the petitioner has accepted the term and contradiction of the contract, but as aforesaid, no such agreement was shown to her. No such contract was placed on the record. When the petitioner was thrown out of job in the year 2002 and reengaged after four months, she can not be expected to raise any protest regarding the terms and conditions of her employment, when no consent in the written form was obtained from the petitioner.

31. Thus for the aforesaid reasons, it is held that the respondent has failed to prove by leading cogent evidence that the petitioner has consented to change the terms and conditions of her employment at the time of her re-engagement in may 2002. It is further held that despite of the availability of the work throughout the year, the petitioner was given the work for less than 240 days in every year w.e.f 2002 to 2013 with the sole motive that the petitioner could not claim any right under Industrial Disputes Act. It is also established that the work and funds were always available with the respondent throughout and fictional breaks were given to her without her consent. It is also held that the breaks given to the petitioner w.e.f her initial engagement till the year 2013 without her consent, so that she was not able to complete minimum 240 days in each calendar year. It is also held that since the petitioner was engaged much prior to the year 2001 and 2002 when the respondent University decided to engage the workmen on contracts and not on daily wages, therefore, these decisions were not applicable in the case of the petitioner. She was a daily wager and has remained as a daily wager till the year 2013 and her termination on account of non renewal of the contract would amount to her termination under Section 25-F of the Act for reason that there has been change in the terms and conditions of the employment without her consent. Thus violation of Section 25-F of the Act has taken place as the policy of renewal of contracts could not have been applied to her case. The petitioner shall be treated as daily wager from the date of her initial engagement till her services were terminated on the pretext that contract was not renewed. Since her services conditions were changed without her consent, as held hereinabove therefore, alleged contract which have not been tendered on the record can not bind the petitioner. The petitioner was initially engaged as daily wager, and she is therefore, held as a daily wager and she has worked with the respondent till 20.4.2013 with fictional breaks and thus fictional breaks are also unwarranted as there was work always with the respondent. These fictional breaks were given to her with a view to prevent her from claiming the rights under the Industrial Disputes Act hence issue no.1 as framed in the reference no.13/2014 and reference no.583/2014 are held in favour of the petitioner.

ISSUE No. 3 in reference no.13/2014

32. The petitioner has claimed that the work of the Class-III was taken from her by the officers of the University and she, therefore, was entitled to the wages payable to the class-III

employees and not of the class-IV employees, as was paid to her. The petitioner has placed on record various documents in support of her such claim and has made statement in her affidavit to the same effect. The documents consist of copies of various office orders issued by the authorities during various conferences held in the University. In Ext. P-10, (in claim no. 13/14) it has been mentioned that in addition to her own duties, she shall assist the Superintendent. The petitioner was peon and at the same time she was asked to assist the Superintendent. The duties of the Superintendent is to supervise all the affairs of the workers working under him. There can be no other assistance by a peon to the Superintendent except for helping him in carrying the files to his superior and bring them back or assist him in arranging the files. These are the duties of the peon and it can not be said that she was in any manner performing the clerical work by the written orders of her superiors. She has not spoken on oath specifically as to in which manner she use to assist the Superintendent in performing his duty of Superintendence. Ext. P-11 to P-19, (in claim no. 13/14) are various office orders regarding the committees formed for the smooth functioning of various training programmes or the seminars held in the University. The petitioner has been included in those committees to assist the registration of the members. A peon asked to assist the registration work of the participants with other clerks does not become a clerk nor thus a peon perform the duties of the clerk. To assist means to perform the duties as a peon and not to replace the clerical staff deputed in such committees. Thus it can not be said that the petitioner was compelled to perform the duties of the clerk in the respondent University despite of the fact that she was a peon and not a clerk. The petitioner has tendered a copy of the log-book of the Xerox machine as Ext. P-20, (in claim no. 13/14) and has claimed that it has been filled up by her. Even if, it is assumed for a while that she has made entries in this log book, it can not be presumed that she was deputed on the Xerox machine by the University. Unless, a specific office order is proved by her on the record to the effect that she was directed to perform the clerical works on the Xerox machine of the university, it can not be said that she was compelled to work on the seat of Class-III by the University. She has not placed any representation on the record moved by her during her tenure to the effect that she being a class-IV employee should not be compelled to do the work of Class-III employee of the University. There is no representation on the record having been made by her during her services to the effect that she has requested the respondent to release the salary of the class-III employee to her or to not take the work of Class-III employee form her. In-case, the petitioner was voluntarily performing the clerical jobs and assisting the clerical staff, it can not be said that she was ordered to do so by the University management and she had no other choice but to work in the capacity of the clerk despite of the fact that her appointment was that of the peon and not the clerk. The learned AR's for the petitioner have heavily relied upon a letter Ext. P-9, (in claim no. 13/14) addressed to Registrar by the in-charge KVK Chamba, where the request was made to engage the services of DPL Kamla Devi against the post of Jr. Scale Stenographer with the request that her services be continued and work of the stenographer be taken from her and she was trained in shorthand and English typing and handling the computers. This letter is dated 23.11.2000. It may be stated here that no such permission was ever received from the Registrar and the petitioner was never engaged as Jr. Scale Stenographer. In case, the petitioner was a trained Steno and could type and handle the computer, she would not have become the class-III employee automatically when she was engaged as Daily Paid Labour and the muster roll for daily labour was issued in her favour. In case, the petitioner was doing the work of the class-III employee in the office for the reason that she loved to work as such and she wanted to win the confidence of her co-worker and help them in their work, the respondent University does not become liable to treat her as Class-III employee and release the wages of Class-III to her when there is no such office order issued by the office asking her to the work of class-III employee. There is nothing on the record to show that she was compelled to work as clerk in the office and she would have faced the wrath of her superiors, in case, she had refused to work or stopped working as a clerk. Since there was no office order issued to direct her to work as a class-III employee, no action could have been taken against her, in case, she had refused to work as such. When such is the position, She is held as class-IV employee of the department and not entitled to claim the wages as class-III employee. It is

further held that the petitioner is entitled to the wages payable to class-III employees of the University. The letter aforesaid, does not prove the case of the petitioner, in any manner. The due drawn statement filed and proved on the record by the petitioner as Ext. P-24, (in claim no. 13/14) is of no relevance. This issue is held in negative.

Issue no.2 of reference no.13/2014 and 583/2015

33. Both these issues are also taken up together as they are also inter connected and interlinked. Since it has been held that the petitioner was initially engaged as daily paid employees on muster roll and her service condition were changed without her consent on the plea that the policies adopted by the University spoke of engagement only for 89 days and a compulsory break thereafter, it is therefore, held that the fictional breaks given to the petitioner were illegal and those service breaks are liable to be counted towards her seniority, wages and continuity till the date of her actual termination. The petitioner shall be entitled to the back wages as per the prevalent rate to be calculated by the University for the break periods as she was always prepared to work and she was prevented from working by the action of the respondent University. The petitioner is held entitled to receive the wages for the the days of her breaks as DPL right from the date of her engagement till the year 2013 when she was disengaged on the ground that the labour was to be deployed on outsource basis. The wages shall be paid for the whole year (year-wise) and the days shall be calculated from the mandays chart proved on the record. For instance, as the petitioner has been shown to have worked for 228 days in the year 2001, she shall be paid the wages as per the rates prevailing in the year 2001 for the days of her break *i.e.* 365-228=137 days. Same formula shall be applied till the year 2013 when her services were disengaged. After calculating the entire amount the respondent shall pay the same to the petitioner as back wages.

34. The most crucial question that arises for determination is whether the petitioner is entitled for reinstatement or compensation in lieu of the same. It is argued on behalf of the petitioner that she has worked for around 16 years and there are regularization policies of the department in place, and since her termination was wrong, therefore, she is entitled for the relief of reinstatement as per the policies of the state government. On the other hand, the learned counsel for the respondent has argued that petitioner was not entitled for any relief.

35. While going through peculiar facts and circumstances of this case it is no doubt clear that services of the petitioner were illegally terminated in the year 2001 and thereafter she was engaged on the alleged contracts for many years and later on her her contract was not renewed on the plea that the government has introduced the system of outsourcing of the workers, Now the question to be considered by this court as whether she is entitled for reinstatement or any relief lesser to reinstatement can be granted in her favour. The Hon'ble Supreme Court of India has laid broad guidelines on the point as to when the relief of reinstatement is be granted by the labour court and when compensation in lieu of reinstatement has to be awarded in **DEPUTY Executive Engineer v/s Kuberbhai Kanjibhai reported in 2019 (4) SCC 307**. The relevant portion of the judgment is as under:—

[9] In our opinion the case at hand is covered by the two decisions of this Court rendered in the case of Bharat Sanchar Nigam Limited vs Bhurumal, 2014 7 SCC 177 and District Development Officer and Anr. vs. Satish Kantilal Amerelia, 2018 12 SCC 298

[10] It is apposite to reproduce what this Court has held in the case of Bharat Sanchar Nigam Limited (supra):

"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be

illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3), 2006 4 SCC 1]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

[11] Here is also a case where the respondent was held to have worked as daily wager or muster role employee hardly for a few years in R & B of the State; Secondly, he had no right to claim regularization; Thirdly, he had no right to continue as daily wager; and lastly, the dispute was raised by the respondent (workman) before the Labour Court almost after 15 years of his alleged termination.

[12] It is for these reasons, we are of the view that the case of the respondent would squarely fall in the category of cases discussed by this Court in Para 34 of the judgment rendered in Bharat Sanchar Nigam Limited (supra).

[13] In view of the foregoing discussion, we are of the considered view that it would be just, proper and reasonable to award lump sum monetary compensation to the respondent in full and final satisfaction of his claim of re-instatement and other consequential benefits by taking recourse to the powers under Section 11A of the Industrial Disputes Act, 1947 and the law laid down by this Court in Bharat Sanchar Nigam Limited's case (supra).

36. Relying upon the aforesaid ruling, It is important to mention here here that petitioner has not alleged the violation of Sections 25-G and 25-H of the Act, in both the claims. Neither there is a reference to this effect received fro the appropriate Government. The petitioner has nowhere pleaded that there were workmen junior to her and they were retained in the year 2001 when her services were firstly terminated. It is also not the case of the petitioner that any fresh workman was engaged after the year 2001 on daily paid basis and that particular workman was regularized with the passage of time by taking to recourse to the policies of the State Government. It is also not the case of the petitioner that she was engaged initially against a sanctioned post by following recruitment procedure. It is also not the case of the petitioner that workmen junior to her were retained in the year 2001 when her services were terminated and those junior workmen were regularised with the passage of time, whereas, she was re-engaged on contracts. When such is the position then only violation in this case that is made out from the facts and circumstances of the case is the violation of Section 25-F of the Act and that too in the year 2001 when she was firstly terminated without complying the provisions of section 25F of the Act. Rather she was not permitted to complete the work of minimum 240 days in each calendar year, whereas, other similar situated workmen were treated differently. Such findings have already been given in the preceding paras of this Award. Since, her time to time termination has also been condoned in the preceding paras of the Award, she is presumed to have completed the work of minimum 240 days preceding her termination in the year 2001, hence, the violation of section 25 F has been held to have taken place.

37. It has also already been held that the respondent changed the terms and conditions of the employment of the petitioner without formally obtaining her consent after explaining the nature of change in her employment. She was reengaged on contracts for 89 days in a spell, and no such contract was filed and proved on the record to prove the contents of the same. It is however, clear from the averments made by the petitioner in both of her petitions that she was well aware of the fact that her service conditions were changed on her re engagement in the year 2002. The court has held that the services of the petitioner w.e.f to 1998 to 2013 shall be treated on daily wages with condonation of the breaks for the reasons that her services conditions were changed without taking recourse to the provision contained in section 9A of the Act. One fact is , however very much clear from the pleading of the petitioner that she was very much aware of the fact that her service conditions have been changed in may 2002. Para no. 2 & 3 of the claim filed in claim petition no. 13/2014 clearly exhibit that she was well aware of this fact. In claim no. 583 of 2015, similar averments have been made and the grievance of the petitioner has been to the effect that her contract was not being renewed. Despite of this knowledge, the petitioner did not raise the issue of fictional breaks and change in the terms and and remained quite till the year 2012. This issue was raised for the first time by her in the year 2012 by way of demand notice. The petitioner has thus not raised issue at the earliest and this is an additional ground to deny reinstatement to the petitioner. It appears that she firstly awaited for 10 years to pass so that she could bring her case under regularization policy, and only thereafter she raised the demand so that she could get double benefit. When she was well aware of the fact that she was being given fictional breaks right from the very beginning and the terms and conditions of her employment were also changed without obtaining a written consent from her, she could have raised issue at the earliest so that the court would have intervened at earliest and set the wrong to right. The petitioner has placed on the record of claim no. 13/14 several regularization policies of the State Government with respect the to the daily wagers ranging from the year 1996 to 2015 as Ext. P-4 to P-8. It is thus clear that she was conscious of the fact from the very beginning that she could also get the benefit of these policies. Despite of all this she did not raise the issue of fictional breaks at earliest and delayed her matter til the year 2012. Thus the delay occasion on the part of the petitioner to raise the issue of fictional break at earliest, can not be overlooked and the petitioner is not entitled to the relief of reinstatement with seniority and continuity. Rather she is held entitled to the relief of compensation in lieu of reinstatement and the back-wages in the manner as mentioned hereinabove.

38. In view of the aforesaid discussion, taking into account the length of the service rendered, her age and other factors discussed hereinabove, ends of justice shall be met, in case, the petitioner is held entitled to receive a sum of Rs.3,00,000/- in lump-sum as one time compensation in lieu of the violation of the provision contained in section 25 F of the Act by the respondent. The petitioner is also held entitled of the back-wages to be calculated by the University in the manner illustrated hereinabove, and also pay the same to the petitioner along-with the compensation. Both the issues are decided accordingly.

Issues no. 3 to 5 of reference no. 583/2015

39. It may be stated here that the parties have led evidence in the claim petition no. 583 of 2015. same set of witnesses have been examined by the parties as were examined in claim no. 13 of 2014 except for RW2, Sh. Rakesh Sharma, who has tendered o the record the mandays chart fo the petitioner as Ext. RW1/A and copy of a letter and standing instructions as Ext. RW1/B to RW1/D. These documents are formal in nature and stand already discussed in the preceding para of the Award. The petitioner has tendered an application moved to the respondent to get her contract renewed as Ext. PW1/B. She has also tended on the record copy of the Order passed by the Hon'ble Administrative Tribunal and statement of Sh. Rajeev Raina recorded in the reference no. 13 of 2014 as PW1/C and Ext. PX respectively. These documents stands already discussed and need no repetition. The averments in the subsequent direct reference have been made in reference no. 13 of 2014 and have already been discussed.

40. Since, the petitioner has been held entitled to the relief by this court, therefore, the claim is maintainable and the petitioner has also come to the court with cleans hands and she has not suppressed any material facts from the court. Thus issues no. 3 to 5 as framed in claim no. 583 of 2015 are held against the respondent.

Relief in both the petitions :

41. In view of the detailed discussion on all the issues hereinabove, the claim petitions are partly allowed. Both the petitions are held maintainable. The fictional breaks given to the petitioner are condoned holding that the change of the terms and conditions of the employment of the petitioner was in violation to the provision contained in section 9A of the Act as the consent of the petitioner was not obtained in the manner as required. The petitioner is held entitled to Receive compensation of Rs. 3,00,000/- (Three Lakhs Only) as an alternative relief. The prayer for reinstatement is declined for detailed reasons given in the Award. Apart from this, the petitioner is held entitled to the back-wages for the period of absence commencing from 1998 to 2013 to be calculated by the University as per the proved mandays chart and as per the directions given by this court in the preceding para's of the Award. Both the amounts shall be paid within four months by the respondents after the publication of the award, failing which the respondent shall be liable to pay the interest @ 6% per annum from the date of the publication of the award till the actual payment of the amount. Let the signed copy of this Award be placed in the file No. 583 of 2015.

42. The reference is answered in aforesaid terms and the direct reference is decided accordingly. Two copies of this common Award be sent to the Appropriate Government for publication in the official gazette for the purpose of both the claims. Both the files after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of May, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Chamba)

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 34/2021

Date of Institution : 10-3-2021

Date of Decision : 31-05-2023

Sh. Vikas Kumar, aged 39 years s/o Sh. Kanchan Singh Sapehia, r/o House No. 26, Vishal Bhavan, Basoli Morh, Rakkar Colony, Una, Tehsi & District Una, (H.P.). . .*Petitioner.*

Versus

M/s J. S. Grover Automotive Private Limited, N. H. 21, Village & P.O. Jhalera, Amb Road, District Una-174303. Head Office N.H. 154, Village Hatwas, P.O. Malan, Tehsil Nagrota Bagwan, District Kangra, H.P.-176047 . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Manoj Kumar, Ld. Legal Aid. Adv.

For the respondent : Sh. Dinesh Sharma, Ld. Advocate

AWARD

The petitioner has filed this direct claim against the respondent under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) on the averments that he was engaged w.e.f. 10-12-2018 as Showroom Sales Consultant with employee code-13FL0459 and he joined his duties and performed efficiently and with dedication. On 18th August 2020 when he reported to his duties and tried to mark his presence, he was informed that his services were terminated. He made inquiry from Mr. Ishant Sood (Manager Sales) and it was confirmed that his service were no longer required. The petitioner waited patiently outside the premises during the day and tried to know the reasons for his termination but he was not permitted to enter in the office premises. He sent e-mails to the respondent but those e-mail were never replied. After making several requests through e-mail, one E-mail was replied by Ms. Neha Kharwal (Manager-HR), who also failed to explain the reasons for his termination. He was asked in the month of July to visit Kangra for a meeting where one Sh. Kartar Singh Pathania (AGM Personal) misbehaved with him and also threatened him. He was neither reinstated nor pending salary was paid to him. On the aforesaid averments, the petitioner has prayed for compensation and other relief from the respondent.

2. The respondent company resisted and contested the claim and explained that the petitioner was given the work as Salesman and nothing else. He was paid commission and he was not the employee of the company. The case of the respondent is further to the effect that in fact work of the petitioner was not up to the mark and he was warned to improve his results but when he failed to do so, he himself refused to give services to the respondent by sending E-Mail to this effect, hence, the petitioner himself abandoned the work. It is submitted that it was the petitioner himself who behaved in an in appropriate manner and threatened the staff of the respondent. Denying other allegations as incorrect, the respondent has prayed for dismissal of the claim.

3. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. It is asserted that relief claimed may be granted to him.

4. From the pleadings of the parties and language of the reference, following issues were framed for determination on 10.10.2022:—

1. Whether the services of the petitioner were terminated by the respondent without following the process of law and in violation to the provisions of the Industrial disputes, Act, 1947 as alleged? . .*OPP.*

2. Whether the petitioner is entitled to the compensation as claimed by him? . .*OPP.*

3. Whether the claim is not maintainable ? . .*OPR.*

Relief

5. I have heard the learned Counsels for the parties at length and considered the material on record.

6. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	Yes
Issue No.2	:	Partly Yes
Issue No.3	:	No
Relief	:	Petition is **partly allowed** per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 3

7. All these issues are taken up together for discussions being interlinked and interconnected and for the sake of convenience. The respondent is a company and it has not taken the plea that it is not an industry for the purpose of the Industrial Disputes Act. Since the respondent is a company and the company is being run to get profits, therefore, it is covered within the definition of the Industries. The petitioner was engaged as a Sales man as claimed by the petitioner and he was supposed to do the clerical and other works. He is also covered within the definition of the workman given in the Act, and therefore, this court acquires the jurisdiction to entertain the present reference as the dispute between the parties pertains to the termination of the services of the petitioner.

8. The petitioner has alleged that he was engaged on 10-12-2018 and his services were disengaged on 18-08-2020. The respondent has not disputed the date of entry of the petitioner in the services. The respondent has not disputed the date when the petitioner left the service. The petitioner has alleged that his services were engaged on daily wage basis by the respondent and the respondent has pleaded that the services of the petitioner were taken on the payment of the commission on the work done by him. It was thus for the respondent to have placed on the record the terms and conditions settled with the petitioner. No such document has been placed on the record by the respondent and in the absence of any such document, it is not established that the petitioner was only a commission agent and not the workman of the respondent company. Since the respondent has not disputed the period for which the petitioner claims to have worked with the respondent, therefore, it is also proved that the petitioner has worked for more than 240 days till

18-08-2020 in the twelve calendar months preceding to this date. Once such is a position, his service could have been terminated without complying with the provision contained in Section 25-F of the Act.

9. The petitioner has alleged that his services were terminated without following the process of the law. The respondent, on the other hand, has come up with the case that the petitioner was not working to the satisfaction of the company and when he was asked to improve, he himself abandoned the work and wrote E-Mail to the respondent. The petitioner has denied these fact in the rejoinder. Since, the respondent has taken the plea of the abandonment, therefore, it has taken the onus upon it to prove that the petitioner has himself abandoned the work. The petitioner has appeared as PW1 in the witness box and tendered his affidavit Ext. PW1/A. He has tendered on record his termination letter as Ext/ PW1/B and copy of Mail dated 18.08.2020 as Ext. PW1/C. He has also tendered on record extract of his Saving Bank Account as Ext. PW1/D. In his cross-examination he specifically denied that his work was not satisfactory and therefore, he gave up the work at his own. He also denied the suggestion to the effect that he was paid commission and not salary. There is nothing in his cross-examination which would prove that the petitioner was working as a commission agent and not as a workman. The perusal of the letter Ext. PW1/B shows that the petitioner has not abandoned the work but his services were terminated by the respondent on the ground that his conduct towards the Manager at Una Branch was found not appropriate. It has been mentioned in this E-Mail that he could no longer be allowed to continue in service, and therefore, he was relieved with immediately effect. This letter sent by the respondent to the petitioner does not speak of any abandonment of the work by the petitioner. Moreover, there is no letter on the record which would show that the petitioner was called upon to join his work by the respondent after he has left the work. There is another extract of E-mail Ext. PW1/C on the record. This E-mail was sent by the petitioner whereby he has explained that since baseless allegations were being levelled against him by the respondent, therefore, he will meet all these allegations in the Court and he was not ready to receive the full and final settlement. These letters no where make out the case in favour of the plea as taken up by the respondent. Had the petitioner abandoned the work at his own it was the duty of the respondent to call him back and resume his duties. The respondent has rather placed on record the letter relieving the petitioner from his services on the allegations that his conduct was not found proper and he was not improving in the work. Thus it is established that the petitioner has not abandoned his work and his services were terminated by the respondent for the reasons that his conduct was found not appropriate, and secondly, his working was not upto the mark.

10. The respondent has not placed on the record the appointment letter vide which the services of the petitioner were engaged. No terms and conditions settled with the petitioner have been placed on the record. After all, the respondent is the employer and custodian of the record of the employees. It is for the employer to maintain the record in regular course of business. The workman is not expected to prepare documents in his favour. In case the conduct of the petitioner was not proper towards his seniors, and in case, work of the petitioner was not satisfactory, domestic inquiry should have been conducted in the matter against him before taking any action. No such inquiry was conducted in his case. The petitioner was simply relieved from the work and his salary for the month remained unpaid. His full and final settlement never took place. Since the petitioner has worked for more than 240 days in preceding 12 calendar months of his illegal termination, therefore, violation of section 25-F is made out in this case.

11. The respondent has examined Sh. Rakesh Kumar, the authorized person of the company as RW1. He has tendered his affidavit as Ext. RW1/A. The respondent by taking the plea of abandonment of the job on the part of the petitioner has taken the onus upon it. He was subjected to cross-examination wherein he tried to make out the case the petitioner was engaged on trial basis and he was not the employee of the company. He has, as aforesaid, not placed on record

terms and conditions settled with the petitioner or the appointment letter issued in favour of the petitioner to apprise this court of the terms and conditions settled between the parties. His statement does not take the case of the respondent anywhere and he has failed to establish that the petitioner has abandoned the work. Abandonment of the work is not to be presumed lightly by the Court but it is for the employer to take all the safeguard before taking such a plea. As aforesaid, not even a single document has been placed on the record by the respondent to prove that the petitioner had absented himself from the work without any cause and he was called upon to resume his duty and despite of this he did not report to the work. The plea of abandonment has thus failed in this case and it is held that the services of the petitioner were terminated by the respondent without complying with the procedure provided in Section 25-F of the Act and termination of the petitioner is illegal on the face of it.

12. The next question that arises for determination is as to what relief the petitioner is entitled to? The petitioner has not claimed his reinstatement anywhere in the claim. He has claimed compensation only. Otherwise also, the law is settled to the effect that when the violation of the Section 25-F is established without any other violation, the appropriate relief the petitioner can be granted is the relief of the compensation as the employer is always at liberty to termination the service of the such workman even after his reinstatement after complying with the provisions contained in Section 25-F of the Act. In the case in hand, in case the petitioner is order to be reinstated, the respondent is always at liberty to comply with the provision contained in Section 25-F of the Act and terminate the services after paying him compensation calculated in accordance with law. In case, such procedure is followed the award of the Court for the reinstatement of the petitioner shall become in-fructuous and ineffective. Thus taking into account this particular situation coupled with the period for which the petitioner has worked with the respondent and other circumstances, the ends of the justice shall be met, in case, the petitioner is awarded adequate compensation. Since the salary of the petitioner has been withheld for a month and his service were terminated illegally without computing the compensation payable to him under the scheme provided in section 25 F of the Act, therefore, ends of justice shall be met, in case, he is held entitled to receive Rupees 75,000/- (Rupees Seventy Five Thousand only) as full and final compensation by taking into account the length of the services rendered by the petitioner and his harassment and involvement in the litigation for the inaction of the respondent. The petition is held as maintainable, and issues no. 1 to 3 are decided accordingly.

RELIEF

13. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The petitioner is held entitled to a lump-sum amount of Rs.75,000/- as one time compensation in lieu of the termination of his services in violation to the provision contained in section 25 F of the Act. The parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31th day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	35/2021
Date of Institution	:	10-3-2021
Date of Decision	:	31-05-2023

Sh. Ravish Sharma, aged 30 years, s/o Sh. Vijay Kumar Sharma, r/o Village & Post Office Takka, Tehsil & District Una, H.P. . .*Petitioner* .

Versus

M/s J. S. Grover Automotive Private Limited, N.H. 21, Village & P.O. Jhalera, Amb Road, District Una-174303. Head Office N.H. 154, Village Hatwas, P.O. Malan, Tehsil Nagrota Bagwan, District Kangra, H.P.-176047. . .*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. Sandeep Kumar, Ld. Legal Aid. Adv.
For the respondent	:	Sh. Dinesh Sharma, Ld. Advocate

AWARD

The petitioner has filed this direct claim against the respondent under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) on the averments that he was engaged w.e.f. 12-08-2018 as Showroom Sales Consultant with employee code-13JP0590 and he joined his duties and performed efficiently and with dedication. On 18th August 2020 when he reported to his duties and tried to mark his presence, he was informed that his services were terminated. He made inquiry from Mr. Ishant Sood (Manager Sales) and it was confirmed that his service were no longer required. The petitioner waited patiently outside the premises during the day and tried to know the reasons for his termination but he was not permitted to enter in the office premises. He sent E-Mails to the respondent but those E-Mails were never replied. After making several requests through E-mail, one E-mail was replied by Ms. Neha Kharwal (Manager-HR), who also failed to explain the reasons for his termination. He was asked in the month of July to visit Kangra for a meeting where one Sh. Kartar Singh Pathania (AGM Personal) misbehaved with him and also threatened him. He was neither reinstated nor pending salary was paid to him. On the aforesaid averments, the petitioner has prayed for compensation and other relief from the respondent.

2. The respondent company resisted and contested the claim and explained that the petitioner was given the work as Salesman and nothing else. He was paid commission and he was not the employee of the company. The case of the respondent is further to the effect that in fact work of the petitioner was not up to the mark and he was warned to improve his results but when he failed to do so, he himself refused to give services to the respondent by sending E-Mail to this effect, hence, the petitioner himself abandoned the work. It is submitted that it was the petitioner himself who behaved in an inappropriate manner and threatened the staff of the respondent. Denying other allegations as incorrect, the respondent has prayed for dismissal of the claim.

3. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. It is asserted that relief claimed may be granted to him.

4. From the pleadings of the parties and language of the reference, following issues were framed for determination on 10.10.2022:—

1. Whether the services of the petitioner were terminated by the respondent without following the process of law and in violation to the provisions of the Industrial disputes, Act, 1947 as alleged? . .*OPP.*

2. Whether the petitioner is entitled to the compensation as claimed by him? . .*OPP.*

3. Whether the claim is not maintainable ? . .*OPR.*

Relief.

5. I have heard the learned Counsels for the parties at length and considered the material on record.

6. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : Yes

Issue No.2 : Partly Yes

Issue No.3 : No

Relief : Petition is **partly allowed** per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No.1 to 3

7. All these issues are taken up together for discussions being interlinked and interconnected and for the sake of convenience. The respondent is a company and it has not taken the plea that it is not an industry for the purpose of the Industrial Disputes Act. Since the respondent is a company and the company is being run to get profits, therefore, it is covered within the definition of the Industries. The petitioner was engaged as a Sales man as claimed by the petitioner and he was supposed to do the clerical and other works. He is also covered within the definition of the workman given in the Act, and therefore, this court acquires the jurisdiction to entertain the present reference as the dispute between the parties pertains to the termination of the services of the petitioner.

8. The petitioner has alleged that he was engaged on 12-08-2019 and his services were disengaged on 18-08-2020. The respondent has not disputed the date of entry of the petitioner in the services. The respondent has not disputed the date when the petitioner left the service. The petitioner has alleged that his services were engaged on daily wage basis by the respondent and the respondent has tried to make out a case in the evidence that the services of the petitioner were taken on the payment of the commission on the work done by him. It was thus for the respondent to have placed on the record the terms and conditions settled with the petitioner. No such document has been placed on the record by the respondent and in the absence of any such document, it is not established that the petitioner was only a commission agent and not the workman of the respondent

company. Since the respondent has not disputed the period for which the petitioner claims to have worked with the respondent, therefore, it is also proved that the petitioner has worked for more than 240 days till 18-08-2020 in the twelve calendar months preceding to this date. Once such is a position, his service could have been terminated without complying with the provision contained in Section 25-F of the Act.

9. The petitioner has alleged that his services were terminated without following the process of the law. The respondent, on the other hand, has come up with the case that the petitioner was not working to the satisfaction of the company and when he was asked to improve, he himself abandoned the work and wrote E-Mail to the respondent. The petitioner has denied these fact in the rejoinder. Since, the respondent has taken the plea of the abandonment, therefore, it has taken the onus upon it to prove that the petitioner has himself abandoned the work. The petitioner has appeared as PW1 in the witness box and tendered his affidavit Ext. PW1/A. He has tendered on record his termination letter as Ext/ PW1/B and copy of Mail dated 20.08.2020 as Ext. PW1/C. He has also tendered on record extract of his Saving Bank Account as Ext. PW1/D. In his cross-examination he specifically denied that his work was not satisfactory and therefore, he gave up the work at his own. He also denied the suggestion to the effect that he was paid commission and not salary. There is nothing in his cross-examination which would prove that the petitioner was working as a commission agent and not as a workman. The perusal of the letter Ext. PW1/B shows that the petitioner has not abandoned the work but his services were terminated by the respondent on the ground that his conduct towards the Manager at Una Branch was found not appropriate. It has been mentioned in this E-Mail that he could no longer be allowed to continue in service, and therefore, he was relieved with immediate effect. This letter sent by the respondent to the petitioner does not speak of any abandonment of the work by the petitioner. Moreover, there is no letter on the record which would show that the petitioner was called upon to join his work by the respondent after he has left the work. There is another extract of E-mail Ext. PW1/C on the record. This E-mail was sent by the petitioner whereby he has explained that since baseless allegations were being levelled against him by the respondent, therefore, he will meet all these allegations in the Court and he was not ready to receive the full and final settlement. These letters no where make out the case in favour of the plea as taken up by the respondent. Had the petitioner abandoned the work at his own it was the duty of the respondent to call him back and resume his duties. The respondent has rather placed on record the letter relieving the petitioner from his services on the allegations that his conduct was not found proper and he was not improving in the work. Thus it is established that the petitioner has not abandoned his work and his services were terminated by the respondent for the reasons that his conduct was found not appropriate, and secondly, his working was not upto the mark.

10. The respondent has not placed on the record the appointment letter vide which the services of the petitioner were engaged. No terms and conditions settled with the petitioner have been placed on the record. After all, the respondent is the employer and custodian of the record of the employees. It is for the employer to maintain the record in regular course of business. The workman is not expected to prepare documents in his favour. In case the conduct of the petitioner was not proper towards his seniors, and in case, work of the petitioner was not satisfactory, domestic inquiry should have been conducted in the matter against him before taking any action. No such inquiry was conducted in his case. The petitioner was simply relieved from the work and his salary for the month remained unpaid. His full and final settlement never took place. Since the petitioner has worked for more than 240 days in preceding 12 calendar months of his illegal termination, therefore, violation of section 25-F is made out in this case.

11. The respondent has examined Sh. Rakesh Kumar, the authorized person of the company as RW1. He has tendered his affidavit as Ext. RW1/A. The respondent by taking the plea of abandonment of the job on the part of the petitioner has taken the onus upon it. He was

subjected to cross-examination wherein he tried to make out the case the petitioner was engaged on trial basis and he was not the employee of the company. He has, as aforesaid, not placed on record terms and conditions settled with the petitioner or the appointment letter issued in favour of the petitioner to apprise this court of the terms and conditions settled between the parties. His statement does not take the case of the respondent anywhere and he has failed to establish that the petitioner has abandoned the work. Abandonment of the work is not to be presumed lightly by the Court but it is for the employer to take all the safeguard before taking such a plea. As aforesaid, not even a single document has been placed on the record by the respondent to prove that the petitioner had absented himself from the work without any cause and he was called upon to resume his duty and despite of this he did not report to the work. The plea of abandonment has thus failed in this case and it is held that the services of the petitioner were terminated by the respondent without complying with the procedure provided in Section 25-F of the Act and termination of the petitioner is illegal on the face of it.

12. The next question that arises for determination is as to what relief the petitioner is entitled to? The petitioner has not claimed his reinstatement anywhere in the claim. He has claimed compensation only. Otherwise also, the law is settled to the effect that when the violation of the Section 25-F is established without any other violation, the appropriate relief the petitioner can be granted is the relief of the compensation as the employer is always at liberty to termination the service of the such workman even after his reinstatement after complying with the provisions contained in Section 25-F of the Act. In the case in hand, in case the petitioner is order to be reinstated, the respondent is always at liberty to comply with the provision contained in Section 25-F of the Act and terminate the services after paying him compensation calculated in accordance with law. In case, such procedure is followed the award of the Court for the reinstatement of the petitioner shall become in-fructuous and ineffective. Thus taking into account this particular situation coupled with the period for which the petitioner has worked with the respondent and other circumstances, the ends of the justice shall be met, in case, the petitioner is awarded adequate compensation. Since the salary of the petitioner has been withheld for a month and his services were terminated illegally without computing the compensation payable to him under the scheme provided in Section 25 F of the Act, therefore, ends of justice shall be met, in case, he is held entitled to receive Rupees 75,000/- (Rupees Seventy Five Thousand only) as full and final compensation by taking into account the length of the services rendered by the petitioner and his harassment and involvement in the litigation for the inaction of the respondent. The petition is held as maintainable, and issues no. 1 to 3 are decided accordingly.

RELIEF

13. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The petitioner is held entitled to a lump-sum amount of Rs.75,000/- as one time compensation in lieu of the termination of his services in violation to the provision contained in Section 25 F of the Act. The parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 198/2015

Date of Institution : 04-5-2015

Date of Decision : 31-5-2023

Shri Naresh Kumar s/o Shri Bhim Singh, r/o Village Lower Ladwan, P.O. Kurati, Tehsil Joginder Nagar, District Mandi, H.P. . .*Petitioner* .

Versus

The Managing Director (Project), Beas Valley Power Corporation Limited Bhatha, Joginder Nagar, District Mandi, HP. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. N.L. Kaundal, Ld. AR

For the respondent : Sh. R.S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

> **"Whether termination of the services of Shri Naresh Kumar s/o Shri Bhim Singh, r/o Village Lower Ladwan, P.O. Kurati, Tehsil Joginder Nagar, District Mandi, H.P. w.e.f. 31-12-2012 by the Managing Director (Project), Beas Valley Power Corporation Limited Bhatha, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"**

2. The case of the petitioner as made out from the claim is to the effect that he was engaged by Senior Executive Engineer Shri I.M. Sharma on daily wages as computer operator against vacant post on 01.05.2008 without any appointment letter and he worked till 31.12.2012 under supervision of accounts officer. He completed 240 days in each year and his services were terminated w.e.f. 31.12.2012. Three hundred new workmen were engaged thereafter. Neither any show cause notice was served upon him nor compliance of Section 25-F of the Act was made, and therefore, there was violation of the provisions of the Industrial Disputes Act in this case. Juniors workmen were retained and violation of Section 25-G also took place. The demand was raised by the petitioner and thereafter conciliation proceedings took place and the present reference was made by the appropriate Government on the failure of those proceedings.

3. The respondent has resisted and contested the petition on the plea of total denial. It is specifically denied that petitioner was ever engaged as daily waged computer operator and he had worked for 240 days in any of the calendar year. Other allegations are also specifically denied and it is explained that execution of the project known as Uhl-III Hydro project was given on contract

and outsource basis to various contractors and no workman was engaged directly by the respondent. While denying other allegations as incorrect, the respondent prayed for rejection of the claim.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 8.10.2015:—

1. Whether termination of the services of petitioner by the respondent w.e.f. 31-12-2012 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . .*OPR.*

Relief

6. I have heard learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	No
Issue No. 2	:	Negative
Issue No.3	:	No
Relief.	:	Petition is **dismissed** per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No.1 & 2

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The petitioner led his evidence and appeared as PW1 in the witness box. He has tendered several documents being the certificate of his Matriculation Examination as Ext.PW1/B, plus two certificate Ext.PW1/C, computer diploma Ext.PW1/D, letter dated 1.4.2015 Ext.PW1/E and letter dated 27.6.2015 Ext.PW1/F. It may be stated here that respondents were granted several opportunities to lead their evidence on their turn but no evidence was led. Finding that no sufficient cause was shown for not leading the evidence, the evidence of the respondent was closed by the order of the court.

10. Thus the only material before this court is the statement of the petitioner supported by documents proved by him. Before proceeding to appreciate the evidence led by the petitioner it may be stated that, in case, the respondent choose to proceed against exparte, two inference can

possibly be drawn from such conduct. In case, the petitioner has led good evidence (exparte) in support of his case, then the presumption that can be legitimately drawn against the respondent is to the effect that respondent had no material to meet the case of the petitioner and for this reason the respondent has chosen to stay away. In case, the case of the petitioner is weak on the face of it, the second presumption the court can legitimately draw, in case the respondent does not contest the case, is to the effect that respondent knew that the case of the petitioner shall fail in all the eventualities, hence, there was no logic in contesting the same and wasting the money on litigation. This same analogy is to be applied to the facts and circumstances of the present case.

11. The petitioner has tendered his affidavit Ext. PW1/A which is simply the reproduction of the contents of the claim. The petitioner was subjected to cross-examination on behalf of the respondent wherein he pleaded his ignorance to the question as to since when this project was operational. He again pleaded his ignorance to another question as to by which companies this project was constructed. He admitted that this project was given to companies for construction. He further admitted categorically that the entire work of this project was done by the private company. This admission is very crucial and suggests that the respondent has not got the project constructed at its own by deploying labour or other staff. The entire work was assigned to private company on contract. This witness further pleaded his ignorance that as to how many companies have worked in this project and who were the workers. He could not tell as to whether the workers were local or engaged from outside. He again pleaded his ignorance as who used to supervise the work of contractor. He denied that he was neither engaged by the respondent nor he has worked with the respondent. It is settled law that the workman has to bring better material before the court to make it believe that such a workman was really engaged by the respondent and he has actually worked with such respondent. Merely leading vague evidence does not solve the purpose. In case, the petitioner was actually engaged by the respondent, it was his (petitioner's) duty to examine other similar situated people before the court. He has not led any documentary evidence to prove that he has actually worked with the respondent and he was engaged by the respondent. The petitioner has not examined any of his family members, relatives or friends who could have said before this court that the petitioner has worked with the respondent and he was engaged on daily wage basis. When the respondent has come up with the specific plea that entire work of the project was done by the private company then it was for the petitioner to lead better evidence and to prove that he was engaged on daily wage basis for particular reasons. No evidence has been led by him to explain this position. The petitioner has tendered on record information received under RTI Ext.PW1/B and Ext.PW1/C and this information shows that the entire work of the project was executed through contractors and complete list of contractors has been placed on the record. There is no material in the shape of the documents to suggest that respondent has ever engaged any workman directly and given him work on daily wages. There is no evidence led by the petitioner to show that he was paid a specified amount by the company. He has not said anything as to how wages were paid to him. He had not clarified that his presence was marked. Simply by claiming that he was worker of the project will not bring him within the definition of workman for the purposes of this Act. In case the respondent was withholding any record from the petitioner or the court, then it was the duty of the petitioner to have summoned responsible officers from the company as his witness so that they would have thrown light on the true facts. The evidence led by the petitioner is very weak and not sufficient to connect the petitioner with the respondent. Petitioner has pleaded ignorance to almost each and every question put to him before this court. Had he infact worked for many years, he would not have pleaded ignorance to each and every suggestion put to him. The evidence led by the petitioner is thus very weak and not sufficient to establish the relation of the employer and employee between the parties. The petitioner has although alleged that juniors were retained but no list of juniors has been placed by him on the record. Not even a single workman junior to him has been named by him. Had he spoken about the details, the court would have presumed that he was speaking the truth and inference could have drawn against the respondent. Thus the petitioner has failed to stand on his own legs. The failure of the respondent does not make any difference as the

petitioner has to stand on his own legs and not on the weaknesses of the respondent. The petitioner has tried to create evidence in his favour by placing on the record a photocopy of allegedly attendance register, but its original has not been produced at all. No person named in this register apart from the petitioner has been examined to corroborate the case. Possibility can not be ruled out that this document has been tailored in order to get an advantage of the same. In case, this document was maintained by the respondent, it was for the petitioner to explain as to how photocopy of the same fell in his hand when he was not custodian of any such record. Thus this document can not be relied upon to reach any conclusion in favour of the petitioner. Since the petitioner has failed to prove that there was relationship of the employer and the employee between him and the respondent, therefore, no violation of any of the provision of the industrial Disputes Act has been established by the petitioner. Therefore, the petitioner has failed to prove both these issues no.1 and 2 hence, the petitioner is not entitled for any relief and both the issues are held against the petitioner.

ISSUE No.3

12. Since no evidence led by the respondent therefore this issue is held against the respondent.

RELIEF

13. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 133/2015

Date of Institution : 21-3-2015

Date of Decision : 31-5-2023

Shri Sanjeev Kumar s/o Shri Duni Chand, r/o Village Khuddar, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. . .*Petitioner* .

Versus

The Managing Director (Project), Beas Valley Power Corporation Limited Bhatha, Joginder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. N.L. Kaundal, Ld. AR

For the respondent : Sh. R.S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

"Whether the verbal termination of services of Shri Sanjeev Kumar s/o Shri Duni Chand, r/o Village Khuddar, P.O. Bassi, Tehsil Joginder Nagard, District Mandi, H.P. by the Managing Director (Project), Beas Valley Power Corporation Limited, Bhatta, Tehsil Joginder Nagar, District Mandi, H.P. w.e.f. 31.12.2012 without serving any notice, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to?"

2. The case of the petitioner as made out from the claim is to the effect that he was engaged by Senior Executive Engineer Shri I.M. Sharma on daily wages as beldar against vacant post on 15.1.2008 without any appointment letter and he worked till 31.12.2012 under S/Sh. Anoop Sharma, Surinder Thakur and Luder Singh Katwal, Assistant Engineers and Shri Amar Singh Jaswal, Vipin Kumar and Dev Sharma, Junior Engineers in Reservoir. He completed 240 days in each year and his services were terminated w.e.f. 31.12.2012. The respondent engaged three hundred more workmen after his termination. Neither any show cause notice was served upon the petitioner nor compliance of Section 25-F of the Act was made at the time of termination of his services and the respondent, therefore, the respondent violated the mandatory provisions of the Industrial Disputes Act in this case. Juniors workmen were retained and violation of Section 25-G also took place. The demand was raised by the petitioner in which the conciliation proceedings took place, but no amicable settlement could be had. In these facts and circumstances, the Appropriate Government made the present reference to this court. The petitioner has prayed for his reinstatement and other consequential benefits.

3. The respondent has resisted and contested the petition on the plea of total denial. It is specifically pleaded that petitioner was never engaged as daily rated beldar and he never worked for 240 days or more in any of the calendar year. Other allegations are specifically denied and it is explained that execution of the project known as Uhl-III Hydro project took place on contract and outsource basis to various contractors and no workman was engaged directly by the respondent. While denying other allegations as incorrect, the respondent prayed for rejection of the claim.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 8.10.2015:—

1. Whether termination of the services of petitioner by the respondent w.e.f. 31-12-2012 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . .*OPR.*

Relief

6. I have heard learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : No

Issue No.2 : Negative

Issue No.3 : No

Relief : Petition is **dismissed** per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No.1 & 2

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The petitioner led his evidence and appeared as PW1 in the witness box. He has tendered documents being information received under RTI from the respondent Ext.PW1/B and another subsequent information Ext.PW1/C. It may be stated here that respondents were granted several opportunities to lead their evidence on their turn but no evidence was led at all. On being satisfied, that the respondent had no sufficient cause to seek adjournment for leading evidence, the evidence of the respondent was closed by the order of the court.

10. Thus the only material before this court is in the form of the statement of the petitioner supported by documents tendered by him. Before proceeding to appreciate the evidence led by the petitioner it may be stated here that, in case, the respondent choose to proceed against exparte, two inference can possibly be drawn from such conduct. In case, the petitioner has a good case for the relief claimed, intentional absence of the respondent to contest the case leads to the only presumption to the effect that respondent is not capable of meeting the case of the petitioner and for this reason he has chosen to stay away form the case. In case, the case of the petitioner is weak on the face of it, then the second presumption the court can draw is to the effect that respondent knew that the case of the petitioner shall fail in all eventualities, hence, he should not spend on contesting a weak case. This same analogy has to be applied to the present case.

11. The petitioner has tendered his affidavit Ext. PW1/A which is mere reproduction of the claim and nothing more. The petitioner was subjected to cross-examination on behalf of the respondent wherein he pleaded his ignorance to the question as to since when this project was in operational. He again pleaded his ignorance to another question as to by which companies this project was constructed. He admitted that this project was given to companies for construction. He further admitted categorically that the entire work of this project done by the private company. This admission is very crucial and suggests that the respondent has not got the project constructed itself by deploying labour or other staff and the entire work was assigned to private company on contract. This witness further pleaded his ignorance to the suggestion as to how many companies have

worked in this project and who were the workers engaged by them. He could not tell as to whether the workers were local or engaged from outside. He again pleaded his ignorance to the suggestion as who used to supervise the work of contractor. He denied that he was neither engaged by the respondent or worked with the respondent. It is settled law that the workman must better material before the court in support of his case, only then the onus to prove otherwise can be shifted to the employer. Merely leading vague evidence does not serve the purpose. In case, the petitioner was actually engaged by the respondent, he should have examined other similarly situated worker before the court in support of his case. He has not placed on record any documentary material to prove that he has actually worked with the respondent and he was engaged by the respondent. No such person has been examined by the petitioner, who has ever worked with him as beldar with the respondent. The petitioner has not examined any of his family members, relatives or friends who could have said before this court that the petitioner has worked with the respondent and he was engaged on daily wage basis by the respondent. When the respondent has come up with the specific plea that entire work of the project was done by the private company on contract then it was for the petitioner to lead better evidence and prove that he was engaged on daily wage basis by the respondent. The petitioner has tendered on record information received under RTI as Ext.PW1/B and Ext.PW1/C and this information shows that the entire work of the project was executed through contractors and complete list of contractors has been placed on the record. There is no material in the shape of documents to suggest that respondent has ever engaged any workman directly and given him work on daily wage basis. There is no evidence led by the petitioner to show that he was paid a particular amount by the company in a particular form. He has not said anything as to how wages were paid to him. Simply by pleading that he was worker of the project will not bring him within the definition of workman for the purposes of this Act. In case the respondent was withholding any record, then it was the duty of the petitioner to have summoned responsible officers from the respondent as his witnesses and make them speak before the court with the record. The evidence led by the petitioner is very weak and not able to connect the petitioner with the respondent. Petitioner has pleaded his ignorance to almost each and every suggestion put to him. Had he infact worked for many years with the respondent, he would not have pleaded ignorance to each and every suggestion put to him that the evidence. The petitioner has thus failed to stand on his own legs and he can not take any advantage of the fact that the respondent has not chosen to contest the case after the evidence of the petitioner was led. There was nothing on the record which the respondent could have rebutted by leading evidence as the documents pertaining to the respondent were tendered on the record by the petitioner himself and these documents proved that the entire work of the respondent was outsourced to contractors and no workman was engaged by the respondent at its own. Thus once the engagement of the petitioner by the respondent is not proved in the manner as alleged, it is also not proved that the petitioner has worked for 240 days in any of the year with the respondent. It is also not proved that the services of the petitioner were terminated by the respondent by illegal means. The petitioner has although alleged that juniors were retained but no list of juniors has been placed by him on the record,. Not even a single workman junior to him has been named by him. Had he produced any such record the court would have presumed that he was speaking the truth and inferences could have been drawn against the respondent. It does not make any difference that the respondent has not led any evidence as the petitioner has himself failed to stand on his own legs. Thus for the aforesaid reasons, the petitioner has failed to prove that any workman was engaged after his services were terminated by the respondent. In fact neither the engagement of the petitioner nor his termination are established, therefore, the petitioner has failed to prove both these issues, hence, the petitioner is not entitled for any relief and both the issues are held against the petitioner.

ISSUE No.3

12. Since no evidence led by the respondent therefore this issue is held against the respondent.

RELIEF

13. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 83/2020

Date of Institution : 10-9-2020

Date of Decision : 31-05-2023

Smt. Rinki w/o Sh. Hans Raj, r/o Village Lohri, P.O. Mehla, Tehsil & District Chamba, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Chamba Forest Division, District Chamba, H.P.
. .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Akshay Jaryal, Ld. Adv

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

"Whether termination of daily wages services of Smt. Rinki w/o Shri Hans Raj, r/o Village Lohri, P.O. Mehla, Tehsil & District Chamba, H.P. w.e.f. 27-05-2018 (as alleged by workman) by the Divisional Forest Officer, Chamba Forest Division, Chamba, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 and after her illegal termination Shri Chaman Lal s/o Shri Punnu, r/o Village Kira, P.O. Mehla, Tehsil & District Chamba, H.P. was

employed, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner, in brief, is to the effect that she was engaged in the year 2016 as daily paid nursery worker in the forest department in district Chamba and her services were disengaged on 27-05-2018 without serving any notice and without affording her any opportunity of being heard. As per the petitioner, she is a poor lady having low vision with 40 % permanent disability. She has no source of income after her termination. The workman junior to her namely Sh. Chaman Lal s/o Sh. Punnu Ram has been allowed to continue the work in violation to the Rule of 'Last come First go'. The petitioner has alleged that she raised the demand vide demand notice dated 5-03-2019 and the matter was referred to the Court by the Appropriate Government on the failure of the conciliation proceedings. She has alleged the violation of Section 25-F, 25-G and 25-H of the Act in this case and prayed for her reinstatement with all consequential benefits.

3. The respondent has resisted and contested the claim on the plea that it was not maintainable for the simple reason that the petitioner was not a workman and she was not engaged on daily wage basis as claimed by her. It is explained that the department was performing forestry work which was seasonal in nature and subject to availability of funds. The petitioner was deployed on forestry work in Mehla Nursery of Upper Chamba Range in the months of August, September and December, 2017 as a casual worker and she was paid on bill basis. Sh. Chaman Lal was senior to her and he was also engaged on muster roll / bill basis for the forestry work. When funds were exhausted, the petitioner was asked to work in another beat but she did not comply with the advise and preferred to remain idle or without the work. The respondent has denied that services of the petitioner were terminated in violation of Section 25-F and 25-G of the Act. It is submitted that no violation of any provisions of the Industrial Disputes Act has taken place, hence the claim petition was liable to be rejected.

4. The petitioner has filed rejoinder wherein she pleaded that work of nursery was regular and not seasonal and the respondent has not followed the instructions of the Government in a rightful manner. It is submitted that Sh. Chaman Lal was junior to her and not her senior. It is submitted that the petition be allowed.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 08.12.2021:—

1. Whether termination of daily wages services of petitioner w.e.f. 27.05.2018 by the respondent is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to from the employer/ respondent? . .*OPP.*

3. Whether the claim petition is not maintainable? . .*OPR.*

Relief

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, while taking up these issues for adjudication, the findings of this Court on the above issues are as under:—

Issue No.1	:	No
Issue No.2	:	Decided Accordingly
Issue No.3	:	No
Relief.	:	Claim petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 to 3

8. All these issues being interlinked and interconnected are taken up together for convenience and in order to avoid repetition of evidence. The petitioner, claims to have worked from the year 2016 to 27.05.2018 without any break with the respondent, whereas, the respondent, has denied the allegations and explained that she has worked on bill basis in the months of August, September and December 2017 and when on account of non-availability of work at one place when she was asked to work at other places where the forestry work was available, she did not comply with the advise and preferred to remain idle. The initial onus is upon the petitioner to prove that she has worked for more than 240 days before her alleged termination. Once she succeeds to discharge the onus, only then it shifts upon the respondent. The petitioner has led no documentary evidence in support of her plea. She has sworn her affidavit in support of her case which is replica of the claim petition without any additional information. When subjected to cross-examination, she admitted in the very first line that she has worked in the month of August, September and December 2017 with the respondent. This admission is very crucial and destroys her own case whereby she has alleged that she has worked with the respondent w.e.f 2016 to May 2018. When she was further cross-examined, she tried to improve her case by volunteering to speak that she was kept on the work after the year 2017 upto 2018. She further spoke that she was not paid any amount by the respondent for this period. This statement is only an attempt to improve her case without anything more. There is no material on the record to support this plea. It is not even pleaded in the claim that her payments were withheld and she was made to work for free in the department by the respondent. Bare allegations do not constitute the proof of a fact. Rather best evidence must be led to support a plea raised in the pleadings. The petitioner has examined one Krishan Chand as PW2 in the witness-box in support of her claim, who too has filed his affidavit after copying the contents of the claim. There is no originality in the same. This witness has feigned his ignorance about the fact that the petitioner has never worked for 240 days in any of the year. His statement also does not support the case of the petitioner in any manner. It is easy for any one to come forward and depose in favour of a person whom he wants to help. This witness has now retired from the department and he is at liberty to say anything. His statement does not inspire any confidence. His statement is vague in nature and not sufficient to prove the pleaded case of the petitioner particularly when she has herself admitted that she has worked only for three months with the respondent.

9. On the other hand, the case of the respondent has been very specific to the effect that there is a complete ban on engagement of the workmen on muster-roll basis and as per the notification of the State Government adopted by all the departments including the respondent department, the work below one Lakh has to be executed on bill basis on the approved scheduled rates and no daily wager could be engaged for this purpose. The notification has been tendered on the record as Ext. PW1/B by the petitioner herself. In the aforesaid background, the respondent has tendered on the record the bills as Ext. RW1/B to RW1/D. These bills pertains to the months of August, September and December 2017 and the petitioner has performed the work of filling of the

poly bags etc. on the approved scheduled rates and she was paid accordingly through bills. She has appended her signatures on all these bills. It is also clear from these documents that a specific work was allotted to the petitioner and this work was not of the permanent nature. The work would have come to an end when the agreed number of poly-bags stood filled up with soil by the petitioner. She was to be paid on the rates settled per bag. Thus she has been treated as a petty contractor and her services were never engaged on daily wage basis. There was a sort of contract in between the department and petitioner whereby she had agreed to perform and finish a particular specified work on the scheduled rates. No muster-roll was issued in her name and no wages were paid. She was paid the settled amount that was settled as per the approved scheduled rates of the government. She has worked only during the period of three months. Even her working days are not ascertained as she was not given the work days-wise, but she had agreed to complete a specified work after settling the rates in lump-sum at the very beginning. The petitioner is not proved to have worked for at least 240 days, and there is no question of violation of the provisions contained in section 25 F of the Act. She is proved to have worked within the time span of three months for the days not counted at all. There is no violation of the provision contained under section 25 F of the Act. The petitioner is not entitled for any relief on this ground. The petitioner has failed to prove that the respondent has caused the violation of section 25 G of the Act by retaining the juniors at the cost of the petitioner. The petitioner has tried to make out a case that Sh. Chaman son of Sh. Punnu Ram was junior to the petitioner and he was retained and the services of the petitioner were terminated. The respondent has specifically met this case when the RW1 specifically pleaded in his affidavit that this Chaman was senior to the petitioner and he has worked on muster-roll and bill basis. There is no cross-examination conducted upon RW1 on this aspect. The statement has gone unrebutted and unchallenged. It was for the petitioner to have specifically put the year in which this Chaman Lal was engaged. The petitioner could have even insisted that the records pertaining to this Chaman Lal be produced in the court for inspection. Nothing was done on behalf of the petitioner and the statement of the RW1 has gone absolutely unrebutted and unchallenged. RW1 has deposed all these facts from the perusal of the records in his office, and therefore, his statement can not be disbelieved when he states that this Chaman Lal was senior to the petitioner and his services were taken on muster-roll and bill basis. When the practice of engaging the workers on muster-roll was discontinued in the year 2009 in the department, it is but natural that this Chaman Lal has started working with the respondent even prior to the year 2009, and for this reasons, muster-roll was issued in his favour. After the year 2009, he was also given the work on bill basis. It is for this reason that the respondent has used the words muster-roll/ bill basis in the reply filed to this allegation. Since the petitioner claims that she was engaged in the year 2017, it is but natural that Sh. Chaman Lal, who has even worked on muster-roll has started working with the respondent prior to the year 2009. He is thus a senior to the petitioner and the petitioner can not contend the violation of the provision contained in section 25 G of the Act.

10. Thus for the reasons discussed hereinabove in detail, the petitioner has failed to prove that the respondents have violated the provisions contained in section 25 F and 25 G of the Industrial Disputes Act. The petitioner, is therefore, not entitled for any relief. So far as the maintainability of the claim is concerned, it may be stated that since the claim has been filed in support of the reference, therefore, it is maintainable irrespective of the fact that the petitioner has failed to prove her case. Issues no. 1 and 2 are held against the petitioner, and issue no. 3 against the respondent.

RELIEF

11. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

12. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of May, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-*Industrial,*
Tribunal, Kangra at Dharamshala, H.P.

राज्य निर्वाचन आयोग हिमाचल प्रदेश
STATE ELECTION COMMISSION HIMACHAL PRADESH
Armsdale Building,-171002 Tel. 0177-2620152, 2620159, 2620154
Email: secysec-hp@nic.in

NOTIFICATION

Shimla-2, the 16th September, 2023

No. SEC (18)1-96–III-4854.—The State Election Commission hereby adopts the Himachal Pradesh Department of Personnel, Chowkidar, Class-IV (Non-Gazetted) Common Direct Recruitment and Promotion Rules, 2010, as notified in the e-Gazette *vide* Per (AP)-C-A (3)2/2010, dated 3rd December, 2010 and as amended from time to time, for its implementation in the State Election Commission.

By order,

Sd/-
(ANIL KUMAR KHACHI),
State Election Commissioner (H.P.).

राज्य निर्वाचन आयोग हिमाचल प्रदेश
STATE ELECTION COMMISSION HIMACHAL PRADESH
आर्मसडेल, शिमला–171002 Armsdale, Shimla-171002 Tel. 0177-2620152, 2620159, 2620154, Fax. 2620152
Email: secysec-hp@nic.in

NOTIFICATION

Dated, the 16th September, 2023

No. SEC(F)1-35/2022-4718.—In exercise of the powers vested in it under Article 243K & 243ZA of the Constitution of India, Section 160 of the Himachal Pradesh Panchayati Raj Act, 1994, Section 281 of the H.P. Municipal Act, 1994 read with Rule 22 of the Himachal Pradesh Panchayati Raj (Elections) Rules, 1994 and Rule 26 of the H.P. Municipal Election Rules, 2015 respectively, the State Election Commission Himachal Pradesh hereby directs a special revision of electoral rolls of those Panchayats of the State wherein any casual vacancies have occurred till **15th September, 2023** and Nagar Panchayat Chopal of district Shimla and Arki of District Solan**.** The programme shall not be applicable to those casual vacancies which are sub-judice in any court of law.

The date of determining the eligibility of a person for inclusion of the name in the electoral rolls shall be **01-09-2023** as required under Rule 14 (e) H.P. Panchayati Raj (Elections) Rules, 1994 and 17(a) of the H.P. Municipal Election Rules, 2015. The programme is as under:—

1.	Draft publication of electoral rolls	19-09-2023
2.	Filing of claims and objections before the Revising Authority.	20-09-2023 to 25-09-2023
3.	Disposal of claims and objections by the Revising Authority.	By 28-09-2023
4.	Filing of Appeals before the Appellate Authority	By 03-10-2023
5.	Disposal of Appeals by the Appellate Authority	By 05-10-2023
6.	Final publication of electoral rolls	07-10-2023

The last updated final electoral rolls alongwith Supplementary List-2022 and 2023, if any, shall be notified as draft electoral rolls under Rule 15 of Himachal Pradesh Panchayati Raj (Elections) Rules, 1994 and Rule 19 of the H.P. Municipal Election Rules, 2015.

The District Election Officer (Panchayat) and Electoral Registration Officer of concerned Municipality will appoint Revising Authorities as required under relevant provisions of the Rules and ensure that wide publicity of the said appointment and of the special revision programme is made.

After the disposal of claims, objections and appeals, if any, District Election Officer (P) and Electoral Registration Officer shall prepare a supplementary list 2023 through ERMS Software and shall issue a notice of final publication of electoral rolls as per schedule fixed by the Commission. The finally published electoral rolls shall be uploaded on the official website of the State Election Commission.

As soon as the notice of final publication is issued by the District Election Officers (P) and concerned Electoral Registration Officers, the intimation of the same be sent to the Commission immediately through E-mail followed by confirmation by post. Thereafter, adequate copies of the Supplementary List, 2023 shall be printed locally after completing all the codal formalities. These Supplementary Lists shall be added to the main electoral rolls. The last finally published electoral rolls alongwith Supplementary List, 2022 and 2023, if any, and Supplementary list-2023-II shall be used in the ensuing by-elections to fill the casual vacancies.

The relevant provisions enshrined under Himachal Pradesh Panchayati Raj (Elections) Rules, 1994 and HP Municipal Election Rules, 2015 shall be adhered to strictly for the preparation of electoral rolls through special revision. Needless to say that the aforesaid programme should be implemented in letter and spirit. If any violation of this programme is noticed, it will be in contravention of the mandate of the Constitution of India and relevant statutory provisions which may lead to serious consequences.

By order,

Sd/-
(ANIL KUMAR KHACHI),
State Election Commissioner (H.P.).

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, बैजनाथ, जिला कांगड़ा (हि0प्र0)

रविन्द्र कुमार पुत्र स्व0 श्री जोम्फी राम राना, निवासी गांव नागटा, डाकघर तरेहल, तहसील बैजनाथ, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

रविन्द्र कुमार पुत्र स्व0 श्री जोम्फी राम राना, निवासी गांव नागटा, डाकघर तरेहल, तहसील बैजनाथ, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र गुजारा है कि उनकी दादी की मृत्यु दिनांक 08–11–1978 को गांव नागटा, डाकघर तरेहल, तहसील बैजनाथ में हुई थी, परन्तु इस बारे पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका। अतः अब पंजीकरण के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त मृत्यु के पंजीकरण बारे में कोई उजर/एतराज हो तो वह दिनांक 18–09–2023 को सुबह 10.00 बजे असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त मृत्यु के पंजीकरण बारे आदेश पारित कर दिये जायेंगे। उसके उपरान्त किसी भी प्रकार का कोई भी उजर/एतराज न सुना जायेगा।

आज दिनांक 04–09–2023 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/–
सहायक समाहर्ता प्रथम श्रेणी,
बैजनाथ, जिला कांगड़ा (हि0प्र0)।

————————

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, उप–तहसील पंचरूखी, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : 07 एन0टी0/2023 तारीख पेशी : 15–09–2023 किस्म मुकद्दमा : नाम दुरुस्ती।

श्री लाला राम पुत्र विधि चन्द, निवासी गांव लमलेहड़, उप–तहसील पंचरूखी, तहसील पालमपुर, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

विषय.––अदालती नोटिस नाम दुरुस्ती बारे।

श्री लाला राम पुत्र विधि चन्द, निवासी गांव लमलेहड़, उप–तहसील पंचरूखी, तहसील पालमपुर, जिला कांगड़ा (हि0प्र0) ने इस अदालत में मय ब्यान हल्फी प्रार्थना–पत्र प्रस्तुत किया है कि प्रार्थी का असली नाम लाला राम पुत्र विधि चन्द है परन्तु राजस्व अभिलेख महाल लमलेहड़, पटवार वृत्त घाड़ में प्रार्थी का नाम

लालमन तथा पिता का नाम विधिया गलत दर्ज है। अब प्रार्थी चाहता है कि उसके तथा उसके पिता के नाम की दुरुस्ती करने उपरान्त सही नाम दर्ज कागजात माल किया जाए।

अतः इश्तहार द्वारा आम जनता को सूचित किया जाता है कि उपरोक्त नाम की दुरुस्ती बारे अगर किसी व्यक्ति को एतराज हो तो वह दिनांक 19–09–2023 को असालतन या वकालतन इस कार्यालय में हाजिर होकर उजर पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी तथा प्रार्थी के सही नाम सम्बन्धित राजस्व अभिलेख में पंजीकरण के आदेश पारित कर दिए जाएंगे।

आज दिनांक 29–08–2023 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
उप–तहसील पंचरूखी, जिला कांगड़ा (हि0प्र0)।

———————

CHANGE OF NAME

I, Guddi aged 58 years, w/o Sh. Ami Chand, r/o V.P.O. Fagu, Tehsil Theog, Distt. Shimla (H.P.) do declare that I have changed my name from Guddi (Previous Name) to Kamla (New Name). All concerned please may note.

GUDDI
w/o Sh. Ami Chand,
r/o V.P.O. Fagu
Tehsil Theog, Distt. Shimla (H.P.).

———————

CHANGE OF NAME

I, DEERGASHISH DHAR aged about 29 years s/o Makhan Lal Dhar, r/o Vidya Bhawan, Sangti, Sanjauli, P.O. Sanjauli, Tehsil & Distt. Shimla (H.P.)-171006 declare that I have changed my name from DEERAG ASHISH DHAR (Previous Name) to DEERGASHISH DHAR (New Name). All concerned please may note.

DEERGASHISH DHAR
s/o Makhan Lal Dhar,
r/o Vidya Bhawan, Sangti,
Sanjauli, P.O. Sanjauli,
Tehsil & Distt. Shimla (H.P.)-171006.

CHANGE OF NAME

I, Kanan d/o Sh. Ashwani Verma, r/o V.P.O. Kashmir, Tehsil Galore, Distt. Hamirpur (H.P.) have changed my name from Kanan to Kanan Thakur for all purposes & documents in future. Please note.

KANAN
d/o Sh. Ashwani Verma,
r/o V.P.O. Kashmir,
Tehsil Galore, Distt. Hamirpur (H.P.).

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।